

REPORTER'S RECORD

VOLUME 1 OF 1 VOLUMES

CAUSE NO. 141-311209-19

1	MBH REAL ESTATE, LLC,	X	IN THE DISTRICT COURT
2	AFI LOAN SERVICING, LLC,	X	
3	ANSON FINANCIAL, INC.	X	
4	J. MICHAEL FERGUSON,	X	
5	P.C.	X	
6	Plaintiff,	X	
7		X	
8	VS.	X	141ST JUDICIAL DISTRICT
9		X	
10	IAN GHRIST AND GHRIST	X	
11	LAW FIRM, PLLC	X	
12		X	
13	Defendants.	X	TARRANT COUNTY, TEXAS

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HEARING

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BE IT REMEMBERED that on the 21st day of February, 2020, the following proceedings came on to be heard in the above-entitled and -numbered cause before the Honorable John P. Chupp, judge presiding, held in Fort Worth, Tarrant County, Texas.

The proceedings were reported by machine shorthand.

A P P E A R A N C E S

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P R O C E E D I N G S

(Friday, February 21, 2020, 9:30 a.m.)

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THE COURT: What are we doing today?

MR. GHRIST: Well, we served post judgment discovery, and they're opposing it.

THE COURT: Okay.

MR. GHRIST: Okay. So basically the sanctions and attorney's fees don't have to be bonded. The court costs have to be bonded. They bonded the court costs.

The Rules of Procedure and the Civil Procedure Remedies Code provide that the -- regardless of whether a bond is posted, the Court can enjoin the defendants from transferring or dissipating assets except in the ordinary course of business, and we served discovery related to that, which is specifically authorized by the rules, and they didn't respond to that at all.

THE COURT: They didn't object or anything?

MR. GHRIST: They filed a response recently with some, like, global objections, but that is not in compliance with the rules, which requires that the objections be preceded by each question that

1 they're being objected to. That is 193.1. I think
2 part of the revisions that were intended to do away
3 with global objections.

4 From their response it looks like
5 they're saying -- let me see how to put this. Rule
6 621a provides that postjudgment discovery is allowed
7 for any matters under Texas Rules of Appellate
8 Procedure 49 and 47, which according to the official
9 comment, it will consolidate it into Rule 24, which is
10 the Rule related to postjudgment transfer or
11 dissipation injunctions.

12 And we also cited case law where they
13 found that that reference to 47 and 49 is now a
14 reference based on this to Rule 24. And 47 and 49
15 don't reference anything related, and it would make no
16 sense for that to be the case.

17 So as far as I can tell, that is their
18 main objection is that they -- they don't have to
19 respond because of this reference to rules 47 and 49,
20 which were later consolidated into Rule 24.

21 I highlighted all the relevant parts if
22 we need to go through them of each rule. It's
23 Appellate Rule 24.2(d) provides that the trial court
24 can enjoin the judgment debtor from transferring or
25 dissipating assets to avoid satisfaction of the

1 judgment except in the ordinary course of business.

2 Then Texas Rules of Civil Practice and
3 Remedies Code 52.006(e) provides that nothing in this
4 section prevents the trial court from enjoining the
5 judgment debtor from transferring or dissipating
6 assets to avoid satisfaction of the judgment, as long
7 as the order does not interfere with the use,
8 transfer, conveyance or dissipation of assets in the
9 normal course of business.

10 We filed a motion asking for that
11 injunction, but we need to do discovery on whether
12 it's necessary or not because under the case law, the
13 court has to find it's necessary to do that before
14 ordering it.

15 THE COURT: If we had an injunction
16 hearing, will there be testimony?

17 MR. GHRIST: I believe so.

18 THE COURT: Why don't we just do that
19 and put him on the stand and ask him the questions you
20 want to ask him?

21 MR. GHRIST: Well, we would have to do
22 a subpoena duces tecum for all the financial records,
23 and we would have to all go through them at the
24 hearing. It would take forever. We're talking about
25 a lot of financial records that have to be gone

1 through. It would be very inefficient to do that all
2 live at the hearing, but I suppose it could be done
3 that way, but there would be hundreds of pages of bank
4 records and other records related to where that money
5 is going. So I think it would be more productive to
6 do discovery first and get the financial records
7 instead of going through them all at the hearing
8 without reviewing them before the hearing.

9 THE COURT: When was the judgment?

10 MR. GHRIST: I believe it was October
11 or September possibly.

12 THE COURT: I mean, is the information
13 just more relevant from that time forward? I mean,
14 you want to see fraudulent transfers after the
15 judgment, right?

16 MR. GHRIST: I don't think so, because
17 all of the cases, like the Americas case that we
18 cited, they looked at the past practices of the
19 judgment debtor to see if it was likely that the
20 judgment debtor would transfer or dissipate assets.
21 They didn't only look at what happened from the date
22 of the judgment onwards. The issue is whether they're
23 likely to transfer or dissipate assets, not just
24 whether they did since the day of the judgment.

25 THE COURT: Okay. How can he ever get

1 an injunction against this company if he doesn't have
2 any information? How can you hide behind that?

3 MR. FERGUSON: Because we posted a cash
4 bond, Your Honor.

5 THE COURT: Okay.

6 MR. FERGUSON: And once you file a cash
7 bond for the amount that is required with two years of
8 interest --

9 THE COURT: It shouldn't matter.

10 MR. FERGUSON: -- it's suspended.

11 THE COURT: What about -- what other
12 money are you talking about? Is there sanctions?

13 MR. GHRIST: Sanctions were --

14 THE COURT: How much was all that?

15 MR. GHRIST: About 140,000.

16 THE COURT: Oh.

17 MR. GHRIST: The rules specifically
18 authorize discovery as it relates to a transfer
19 dissipation injunction, and specifically provides that
20 all other collections in stay except for the granting
21 of that injunction. I would agree that if the
22 injunction is, you know, entered, then we don't need
23 discovery.

24 THE COURT: Do you -- well --

25 MR. GHRIST: And they can still do in

1 the ordinary course of business, whatever is --

2 THE COURT: Are you opposed to the
3 injunction?

4 MR. FERGUSON: Yes, I'm opposed to the
5 injunction. He has no evidence. This was about real
6 estate. Real estate is public record. He can go
7 right over to the courthouse and see if anything is
8 transferred. He has no evidence. All this is doing
9 is he has filed one subpoena after another. Even
10 after we superceded the judgment, he still continued.

11 I paid the additional, because he
12 claimed that we didn't pay enough. And so he's coming
13 into court with these pleadings that I'm not even real
14 sure what they are, because they talk about
15 injunctions, but he has no pleadings as required by
16 680 or 683 of the Texas Rules of Civil Procedure.
17 There's got to be threats of imminent harm. He
18 doesn't have any pleadings to support any of this, and
19 he has no evidence to support any of this. And he's
20 trying to go back five years to look at bank records
21 when everything that this case and both cases have
22 been about was real estate, and all of that is public
23 record.

24 THE COURT: Does MBH have any assets
25 other than real estate?

1 MR. FERGUSON: No.

2 THE COURT: Do you think they do?

3 MR. GHRIST: Of course they do, because
4 there's mortgages and there's payments being made
5 every month, and none of the records of where that
6 money went are public. All I only know is if there is
7 currently a lien on the property or not. I don't have
8 any idea what happened to all of the money.

9 MR. FERGUSON: Your Honor, we had to
10 file reports monthly in the court. We had to pay
11 money into the court every month with a report, what
12 money was collected. All of that was done in the 17th
13 District Court. He knows exactly what happened to
14 that money.

15 MR. GHRIST: He is referring to that,
16 which was several years ago -- well, it was two -- let
17 me think. It was back in -- those reports stopped in
18 maybe May of '18, I would say. Those reports are only
19 related to MBH Real Estate, LLC, not any of the other
20 judgment debtors.

21 MR. FERGUSON: Your Honor, at the end
22 of the day, he's trying to compel something that he
23 doesn't even have a motion --

24 THE COURT: I think he just filed it.
25 Did you just file it?

1 MR. GHRIST: Yes. I saw that the
2 response said, well, you didn't have a motion, so I
3 went ahead and filed a motion, and I don't know that
4 that's really important, but --

5 THE COURT: There is no affidavit or
6 anything.

7 MR. GHRIST: -- but I went ahead and
8 filed it so that it's on file, but there's no details
9 in it because I don't have any of the discovery yet,
10 but it is on file.

11 THE COURT: There is a motion now on
12 file, but there's not much to it.

13 MR. FERGUSON: It does not meet the
14 requirements for an injunctive hearing.

15 THE COURT: No, it doesn't. There's no
16 doubt about that.

17 MR. GHRIST: I hope -- well, two
18 things. One is that the standard is not the standard
19 for an injunction. It's the standard in the Rules of
20 Procedure for a postjudgment injunction for them to
21 transfer dissipation of assets, which is whether the
22 Court finds that it's necessary or not.

23 Under 621a, Appellate Rule 24, and to
24 the official comments, discovery is allowed on the
25 issue of whether the injunction should issue,

1 regardless of whether the bond is posted. Those are
2 treated like two separate issues.

3 THE COURT: And this judgment has been
4 suspended by a supersedeas bond, correct?

5 MR. GHRIST: Yes.

6 THE COURT: And this says any time
7 after rendition of the judgment and so long as said
8 judgment has not been suspended by the supersedeas
9 bond. And it has been.

10 MR. GHRIST: Which rule are you
11 reading?

12 THE COURT: 621a.

13 MR. GHRIST: Oh, yes, yes, that's
14 correct. And then it says also at any time after
15 rendition of judgment, either party may, for the
16 purpose of obtaining information relevant to motions
17 allowed by Texas Rules of Appellate Procedure 47 and
18 49, footnote two, initiate and maintain discovery
19 proceedings. So that is the exception there, the rule
20 and then the exception right under --

21 THE COURT: Which part of 24 are we
22 looking at?

23 MR. GHRIST: 24.1 -- sorry, 24.2(d).

24 MR. FERGUSON: Your Honor, if you also
25 look at 24.4, because the only motions that are

1 allowed are those that are under 24.4.

2 THE COURT: Well, 621 does seem to say
3 that if the process is initiated under 24 that they
4 can get discovery, right?

5 MR. FERGUSON: Right, but if you go to
6 24.4, it tells you specifically what -- you are
7 talking about the sufficiency of the amount of the
8 bond and the case that he keeps quoting, if you read
9 it, in that case they were supposed to file an \$18
10 million bond, and they didn't want to. So they filed
11 a motion to get an alternative bond. And that's what
12 initiated that discovery. In this case a cash bond
13 was paid, and that cash bond cannot be reviewed by the
14 courts.

15 We didn't argue with Mr. Ghrist when he
16 filed his -- although I don't think he did it right --
17 we just paid the additional money. So we paid the
18 cash bond. The Court of Appeals cannot change that.

19 THE COURT: So you're saying that when
20 you read 621 and 24 together, that the only discovery
21 he can get if you post a bond is about the amount of
22 the bond?

23 MR. FERGUSON: You -- it states in
24 24.4, motions and review. A party may seek review of
25 the trial court's ruling by a motion filed in the

1 court of appeals with jurisdiction or potential
2 jurisdiction over the appeal from the judgment in the
3 case.

4 A party may seek review of the court of
5 appeal's ruling on the motion by petition for writ of
6 mandamus in the Supreme Court.

7 The appellate court may review the
8 sufficiency or excessiveness of the amount of
9 security, but when the judgment is for money, as in
10 this case, the appellate court must not modify the
11 amount of security to exceed the limits imposed by
12 24.2(a)(1). They can review the sureties on the bond,
13 the type of security, the determination whether to
14 permit suspension of enforcement; and a trial court's
15 exercise of discretion under Rule 24.3(a).

16 THE COURT: How is the -- I mean 621
17 does not exempt out 24.2(d). I mean if he seeks an
18 injunction, how come he can't get discovery under 621?

19 MR. FERGUSON: Because it specifically
20 states that it's only under 24.4.

21 THE COURT: Where does it specifically
22 state that? I mean, it doesn't state that in Rule
23 621a.

24 MR. FERGUSON: The types of motions
25 allowed by Rule 24 of the Texas Rules of Appellate

1 Procedure are only those relating to appellate review
2 of trial court's judgment under Texas Rules of
3 Appellate Procedure 24.4.

4 THE COURT: Where am I reading that?

5 MR. GHRIST: This only relates to
6 whether the court of appeals can review this decision
7 or not.

8 THE COURT: Where are you reading that
9 that you said it only --

10 MR. FERGUSON: I just had that it came
11 from Texas Rules of Appellate Procedure 24.4.

12 THE COURT: But I'm trying to see where
13 the only time you can have discovery is when it
14 relates to 24.4.

15 MR. FERGUSON: We posted a cash bond,
16 so that can't challenged.

17 THE COURT: Okay. And I understand
18 that, but in here it contemplates --

19 MR. FERGUSON: He has no evidence of
20 anything being dissipated or transferred.

21 THE COURT: Okay. In here it
22 contemplates --

23 MR. FERGUSON: It's a fishing
24 expedition looking for --

25 THE COURT: Stop.

1 In here it contemplates a situation
2 where you post a bond, and they can get discovery
3 afterwards, in 621a, right?

4 MR. FERGUSON: Under certain
5 conditions.

6 THE COURT: Okay. So I agree you
7 posted your bond. Then we need to go to 24 to figure
8 out information relevant to motions allowed by the
9 Texas Rules 47 or 49, which is now 24. So any motion
10 that's related to 24, he can get discovery on.

11 MR. FERGUSON: So what was your
12 question, Your Honor?

13 THE COURT: My question says that at
14 any time after rendition of the judgment either party
15 may, for the purpose of obtaining information relevant
16 to motions allowed by Texas Rule of Appellate
17 Procedure 47 or 49 initiate and maintain in the trial
18 court in the same suit, discovery. And so injunction
19 is one of the things in 24. So can he get discovery
20 on it since it's in there?

21 MR. FERGUSON: But I think -- I mean, I
22 just respectfully disagree, Your Honor, because 24 is
23 talking about the suspension of enforcement, the
24 methods, the amount of the bonds, the type --

25 THE COURT: But it specifically talks

1 about transferring assets in here.

2 MR. FERGUSON: What's that?

3 THE COURT It talks about transferring
4 assets to avoid satisfaction of the judgment.

5 MR. FERGUSON: Okay. Can you point to
6 me where you are -- what you're relying on.

7 THE COURT: Where it says injunction,
8 24.2(d).

9 MR. FERGUSON: Even if you are there,
10 Your Honor, to get an injunction you have to show that
11 there's irreparable harm.

12 THE COURT: We're not here on the
13 injunction hearing today.

14 MR. FERGUSON: That's my point.

15 THE COURT: That's not your point. We
16 are here on getting discovery to see if he can get an
17 injunction.

18 MR. FERGUSON: No, we're here on a
19 motion to compel discovery.

20 THE COURT: I'm not going to compel you
21 to answer discovery. What I'm going to do, now that
22 he has something on file that he can get discovery on
23 it, I think you should answer it within 30 days from
24 today or you waive your objections.

25 Make your objections to that. He has

1 got something on file that I think complies with 621a
2 and 24. And so if you want to object to the discovery
3 that he sent you, then object and we'll have a hearing
4 on that. But I'm going to consider your discovery
5 filed -- or sent to him yesterday when you filed your
6 motion, because I don't think you could send discovery
7 until you filed a motion.

8 And neither of you like my ruling, so I
9 guess I did something right. Because you didn't have
10 anything on file that was for an injunction, right?

11 MR. GHRIST: No, Your Honor.

12 THE COURT: So answer it or don't. You
13 have 30 days from yesterday, and you can object, and
14 we'll have a hearing on the objections.

15 MR. FERGUSON: Okay. Your Honor, can
16 we get an order on that?

17 THE COURT: Yes, if you want an order,
18 just say that the court has deemed that the discovery
19 was sent to you yesterday.

20 MR. FERGUSON: If you don't mind, I'll
21 submit an order and get it to Mr. Ghrist.

22 THE COURT: Okay. And then y'all can
23 use whatever procedures you have after that.

24 MR. FERGUSON: Okay. Thank you.

25 MR. GHRIST: Thank you, Your Honor.

1 Have a good day.

2 THE COURT: You, too.

3 (End of proceedings)

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C E R T I F I C A T E

THE STATE OF TEXAS X

COUNTY OF TARRANT X

I, Christina Fett, Official Court Reporter in and for the 141st District Court, State of Texas, County of Tarrant, do hereby certify that the above and foregoing contains a true and correct transcription of all portions of evidence and other proceedings requested in writing by counsel for the parties to be included in this volume of the reporter's record in the aforementioned cause, all of which occurred in open court or in chambers and were reported by me.

I FURTHER CERTIFY that this reporter's record of the proceedings truly and correctly reflects the exhibits, if any, admitted by the respective parties.

I FURTHER CERTIFY that I have no financial interest in the matters shown herein, and that I am not related to any of the parties or their counsel.

I FURTHER CERTIFY that the total cost for the preparation of this reporter's record of the proceedings is \$210.00 and was paid by the Plaintiff.

WITNESS MY OFFICIAL HAND this the 6th day of May, 2020.

/s/Christina Fett

Christina Fett, Texas CSR 4590

CSR Expires 7-31-22

Official Court Reporter, 141st District Court

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Tina Fett, CSR

Official Court Reporter 141st District Court

REPORTER'S RECORD

VOLUME 1 OF 1 VOLUME

CAUSE NO. 141-311209-19

MBH REAL ESTATE, LLC,	X	IN THE DISTRICT COURT
AFI LOAN SERVICING, LLC,	X	
ANSON FINANCIAL, INC.	X	
J. MICHAEL FERGUSON,	X	
P.C.	X	
Plaintiff,	X	
	X	
VS.	X	141ST JUDICIAL DISTRICT
	X	
IAN GHRIST AND GHRIST	X	
LAW FIRM, PLLC	X	
	X	
Defendants.	X	TARRANT COUNTY, TEXAS

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HEARING

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BE IT REMEMBERED that on the 8th day of May,
2020, the following proceedings came on to be heard in
the above-entitled and -numbered cause before the
Honorable John P. Chupp, judge presiding, held in Fort
Worth, Tarrant County, Texas.

The proceedings were reported by machine
shorthand.

A P P E A R A N C E S

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P R O C E E D I N G S

(Friday, May 8, 2020, 9:30 a.m.)

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THE COURT: All right. So we are here -- well, let me put us up on You Tube.

All right. Mr. Ghrist, I believe this is your motion. We're on 141-311209-19, MBH versus Ghrist Law Firm. What's going on?

MR. GHRIST: Okay. This is a continuation of the previous hearing. We filed a motion to compel that was set for hearing.

At the hearing the Court said that it was going to deem the request as being served the day before the hearing when the motion to transfer -- or when the motion was filed, and gave them 30 days to comply. We did not receive any responses or objections.

So at this point it's the second opportunity to submit objections in the proper format, which is listed with the questions, as required by the Rules of Procedure, specifically Rule 193.1.

And at this point we would ask that the motion to compel be granted.

THE COURT: All right. Why aren't they getting their requests, Mr. Ferguson?

1 MR. FERGUSON: Your Honor, at the
2 hearing we said that we needed an order, and you had
3 agreed on the record that we could get an order, and
4 we submitted one, and we haven't gotten an order.

5 And, two, they have a -- I'm going to
6 pull up this -- they filed their discovery requests on
7 12-4-2019, along with the subpoenas to the bank. Then
8 on 12-5, we filed a cash bond. And on -- pursuant to
9 Texas Rules of Appellate Procedure 24.1.2(b), that
10 suspends any discovery.

11 And Mr. Ghrist did not have a motion
12 for injunctive relief at that time, and in my opinion
13 he still does not have a motion for injunctive relief.
14 And the cash bond suspends it under 24.1(f). I think
15 I just quoted that wrong, Your Honor.

16 And because they didn't have a motion
17 for injunctive relief and there was no order for
18 injunctive relief, then any request for discovery
19 would be moot.

20 THE COURT: Did you make those
21 objections, though, or are you just making them now?

22 MR. FERGUSON: I'm just saying by
23 matter of law that's -- it's suspended as a matter of
24 law under 24.1(f) once we filed the cash bond.

25 THE COURT: Why didn't we have that

1 conversation last time?

2 MR. GHRIST: We did.

3 MR. FERGUSON: We did, Your Honor.

4 MR. GHRIST: This is this the exact
5 same conversation that we already had.

6 THE COURT: And what did I decide then?

7 MR. GHRIST: That the rules allow for
8 discovery under these -- under this injunctive relief
9 that we filed, and that you were going to give them an
10 additional 30 days by deeming it to have been served
11 as of the date that the motion was filed, and they got
12 additional time to respond and still didn't respond.

13 THE COURT: Right, I mean, that's what
14 I put on the docket sheet, that the discovery is
15 deemed to be sent on 2-20-20.

16 MR. GHRIST: I'm happy to go over all
17 the same things we went over at the prior hearing, but
18 this is the same thing.

19 THE COURT: So, Mr. Ferguson, you're
20 not going to answer these, is that what you're telling
21 me?

22 MR. FERGUSON: Your Honor, we're going
23 to file a motion to review or a writ of mandamus on
24 this, so we need an order, and that's what I was
25 asking for that day in court.

1 THE COURT: Okay. Well, Mr. Ghrist,
2 why don't you -- Mr. Ghrist, go ahead and send me an
3 order and he can go mandamus.

4 MR. GHRIST: Okay.

5 THE COURT: All right, y'all.

6 MR. GHRIST: Your Honor, we had filed
7 one on February --

8 THE COURT: 18th?

9 MR. GHRIST: -- 20th, and I'll be happy
10 to file another one, but that's the one.

11 MR. FERGUSON: I filed one on the 24th,
12 Your Honor, after the hearing.

13 THE COURT: Okay. I'm seeing the 20th.
14 Okay. I'll take a look at it. You don't need to file
15 another one. And I will see what needs to be done.

16 MR. GHRIST: Thank you.

17 THE COURT: All right, guys. Have a
18 good day.

19 (End of hearing)

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C E R T I F I C A T E

THE STATE OF TEXAS X

COUNTY OF TARRANT X

I, Christina Fett, Official Court Reporter in and for the 141st District Court, State of Texas, County of Tarrant, do hereby certify that the above and foregoing contains a true and correct transcription of all portions of evidence and other proceedings requested in writing by counsel for the parties to be included in this volume of the reporter's record in the aforementioned cause, all of which occurred in open court or in chambers and were reported by me.

I FURTHER CERTIFY that this reporter's record of the proceedings truly and correctly reflects the exhibits, if any, admitted by the respective parties.

I FURTHER CERTIFY that I have no financial interest in the matters shown herein, and that I am not related to any of the parties or their counsel.

I FURTHER CERTIFY that the total cost for the preparation of this reporter's record of the proceedings is \$56.00, and was paid by the Plaintiff.

WITNESS MY OFFICIAL HAND this the 11th day of May, 2020.

/s/Christina Fett

Christina Fett, Texas CSR 4590

CSR Expires 7-31-22

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Tina Fett, CSR

Official Court Reporter 141st District Court

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J. MICHAEL FERGUSON, X
P.C. X
Plaintiff, X
VS. X 141ST JUDICIAL DISTRICT
IAN GHRIST AND GHRIST X
LAW FIRM, PLLC X
Defendants. X TARRANT COUNTY, TEXAS

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HEARING

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BE IT REMEMBERED that on the 27th day of August,
2020, the following proceedings came on to be heard in
the above-entitled and -numbered cause before the
Honorable John P. Chupp, judge presiding, via Zoom
teleconference, held in Fort Worth, Tarrant County,
Texas.

The proceedings were reported by machine
shorthand.

A P P E A R A N C E S

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P R O C E E D I N G S

(Thursday, August 27, 2020, 10:30 a.m.)

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THE COURT: All right. So we're here on 141-311209-19, MBH Real Estate versus The Ghrist Law Firm.

Please announce who you are and who you represent. Plaintiff go first.

MR. FERGUSON: I'm Michael Ferguson and I'm representing the plaintiffs, MBH, J. Michael Ferguson, P.C., and Anson Financial, Inc.

MR. GHRIST: Ian Ghrist for myself and Ghrist Law Firm.

THE COURT: All right. So what is going on?

MR. GHRIST: On, let's see, on March -- on May 26th, this court signed an order compelling the plaintiffs to respond to discovery requests. They did not respond, and instead they filed several petitions for mandamus relief and requests for an emergency stay of that order.

Those were all denied by the Second Court of Appeals and the Texas Supreme Court. The one that was filed in the Seventh Court of Appeals was -- the filing was rejected, and they said it should have

1 been filed in another court.

2 So those have been denied. We have
3 still received no response to any of the discovery,
4 and at this point we're past the stage of getting an
5 order to compel, and into the stage of filing for
6 contempt of court and sanctions, discovery sanctions,
7 whatever relief is necessary to get this moving
8 forward.

9 I read the response that was submitted
10 on Monday. I think it's undisputed that we haven't
11 received anything responsive to the Court's order.
12 The \$500 that was ordered has not been paid. And the
13 response that was submitted was styled as a response
14 to a motion to compel, but this is not a motion to
15 compel.

16 We already did a motion to compel.
17 There has already been an order compelling responses
18 to the discovery requests.

19 I didn't see anything in the response
20 that addressed why the plaintiff's should not be held
21 in contempt for not complying with the Court's order.
22 It was all regurgitating the same arguments that
23 failed in the Second Court of Appeals, the Texas
24 Supreme Court and this court.

25 THE COURT: Okay. So let me look here.

1 So May 26th I signed the order to compel related to
2 transfer of -- for participation of assets. I signed
3 that order, and then it looks like on June 15th, the
4 Second Court of Appeals denied the mandamus. July
5 17th the Supreme Court denied the mandamus.

6 And then -- so where are we right now,
7 Mr. Ferguson, is there some other appeal out there?

8 MR. FERGUSON: No, Your Honor. I'm
9 still saying that there are no pleadings on file.

10 If you look at the pleading that Mr.
11 Ghrist filed on 2-20-2020, he titled it Defendant's
12 Motion to Enjoin the Plaintiff's from Transferring
13 Dissipating Assets.

14 THE COURT: Okay. I understand that.
15 But there is a court order saying you turn over
16 documents, and you appealed to the Second Court of
17 Appeals, and you appealed to the Supreme Court and
18 neither of them granted your mandamus.

19 MR. FERGUSON: Your Honor, this is a
20 motion to compel, that's what it states. And if he
21 filed a motion to compel on 2-20, then that replaced
22 the one that he filed on 1-27-2020.

23 THE COURT: He wants to -- this is a
24 motion to have J. Michael Ferguson, et al, held in
25 contempt of court and for sanctions.

1 MR. FERGUSON: Your Honor, if he files
2 a motion to compel, another one after 1-27, and he
3 never gave proper notice for a hearing, it replaced
4 the first one, and so any order that was signed is
5 going to be void.

6 If he's going to file an amended
7 petition, which is what he did, it states there that
8 Ian Ghrist and judgment creditor hearing files their
9 motion to compel. Well, that's another motion to
10 compel, which was filed on 2-20-2020.

11 And so it replaces the one that was
12 filed on 1-27-2020, and we were never given notice
13 on -- proper notice on this motion to compel.

14 THE COURT: Today --

15 MR. FERGUSON: He doesn't have a motion
16 for an injunctive relief filed of record.

17 THE COURT: Let's -- what about the
18 order from 5-26?

19 MR. FERGUSON: Your Honor, I have been
20 complaining about the same thing over and over. There
21 are no motions, no pleadings, to support this.

22 THE COURT: Okay. But did you complain
23 to the appellate court about it?

24 MR. FERGUSON: I filed a writ of
25 mandamus, yes, Your Honor.

1 THE COURT: Okay. And then you
2 complained to the Supreme Court, and neither of them
3 agreed with you. So you still don't think you have to
4 do the -- what you've been ordered to do, even though
5 I ordered it and two other courts ordered it -- or
6 upheld it?

7 MR. FERGUSON: Nobody else -- nobody
8 else --

9 THE COURT: Listen to me. Okay.
10 Listen to me.

11 And two other courts actually denied
12 your mandamus based upon my order, correct?

13 MR. FERGUSON: I guess that's correct,
14 Your Honor.

15 THE COURT: It is correct, right? It's
16 not guess. I mean, they denied your mandamuses,
17 right?

18 MR. FERGUSON: Okay.

19 THE COURT: Okay. So you have an order
20 that's sitting out here right now that you disagree
21 with that you've appealed twice, and you're just not
22 going to comply with it?

23 MR. FERGUSON: Your Honor, there are no
24 pleadings on record that support --

25 THE COURT: Just tell me yes or no.

1 Are you going to comply with the May 26th order?

2 MR. FERGUSON: Based on the fact that
3 there are no pleadings on file that would support
4 this, then, no, we are not required to under -- as a
5 matter of law, we're not required to comply.

6 THE COURT: But how can --

7 MR. FERGUSON: If we follow the law,
8 that's all we are asking the Court to do is follow the
9 law.

10 THE COURT: But I guess, I don't
11 understand how you -- you appeal it to two different
12 courts, and they don't agree with you, but you still
13 think that you are right.

14 MR. FERGUSON: Your Honor, I'm asking
15 you to look at the motion that he filed on 2-20-2020.
16 It states that it's a motion to compel. If that
17 replaces his one that he filed on 1-27-2020, then he
18 failed to give notice of a hearing.

19 And we have never had notice of a
20 hearing. He doesn't have a motion for injunctive
21 relief. And under the rules of -- the Texas Rules of
22 Appellate Procedure, he can't do what he is doing.

23 Just because the Court of Appeals or
24 the Supreme -- the Supreme Court doesn't hardly hear
25 anything. And for the Second Court of Appeals, I

1 don't know why they don't take a look at it.

2 MR. GHRIST: I wasn't able to follow
3 all of that, but we're not here on those motions.
4 We're here on the motion that was filed on 7-20.

5 MR. FERGUSON: It doesn't matter. It's
6 the same issue.

7 THE COURT: Okay. So you are ordered
8 to comply with the discovery requests served on
9 12-4-2019, and you are refusing to do that, even
10 though you are ordered to do it. Is that what you're
11 telling me?

12 MR. FERGUSON: Your Honor, I am telling
13 you that I want -- I'm asking the Court to follow the
14 law.

15 THE COURT: I just --

16 MR. FERGUSON: We had a hearing on --
17 the hearing that we had on 4-20 -- I mean, I'm sorry,
18 on 2-21, on the record you stated that you were not
19 going to compel us, and then, yet, you compel us.

20 And so --

21 MR. GHRIST: That was the first hearing
22 where they were given additional time to respond.

23 THE COURT: Right. Which is what I
24 normally do. I don't want to cause anybody any grief,
25 I just -- I probably gave you extra time, didn't I?

1 MR. FERGUSON: What was stated was that
2 he filed -- he's claiming that what he filed on
3 2-20-2020 is a motion for injunctive relief, which it
4 is not.

5 THE COURT: And he can't get
6 discovery -- we posted a cash bond, and under the
7 rules if we post a cash bond, then all discovery
8 ceases. And then he's going by if he files a motion
9 for injunctive relief to stop us from dissipating
10 assets.

11 And what he filed was a motion to
12 compel, not a motion for injunctive relief.

13 MR. GHRIST: There is two motions. One
14 is a motion for injunctive relief. One is a motion to
15 compel. There may have been two motions to compel. I
16 don't know. We're past that point. I'm happy to
17 argue this all over again, but we have argued it twice
18 already in prior hearings.

19 MR. FERGUSON: If it's not right, it's
20 not right.

21 MR. GHRIST: The rules specifically
22 authorize discovery on this exact issue. There is no
23 question.

24 THE COURT: Okay. I'll just ask you
25 again. So you are ordered to comply with the

1 discovery request served on 12-4-2019. Are you going
2 to comply with those discovery requests that you have
3 been ordered to do or not?

4 MR. FERGUSON: Your Honor, there are no
5 pleadings to support that.

6 THE COURT: I didn't ask you about
7 pleadings. I just asked if you were going to comply
8 with that order.

9 MR. FERGUSON: Based on the fact that
10 there are no pleadings on file that would support that
11 order, no, we are not going to comply, because we are
12 not required to, as a matter of law.

13 THE COURT: Okay. The motions to quash
14 were denied.

15 Did you get the documents from J.P.
16 Morgan Bank?

17 MR. GHRIST: Yes.

18 THE COURT: And Veritex Bank, they
19 complied with the order?

20 MR. GHRIST: They stated they had no
21 records.

22 THE COURT: Okay.

23 MR. FERGUSON: Your Honor, I'd remind
24 you, too, that this is all real estate related, and he
25 can get whatever -- if he wants to see if anything is

1 being transferred, it's public record. Whether
2 it's --

3 MR. GHRIST: None of --

4 MR. FERGUSON: -- it's public record.
5 Any transfer or release, anything, has to be filed of
6 record on any of these things that he claims are out
7 there.

8 THE COURT: Okay. So there were
9 Defendant's first set of postjudgment requests for
10 production. So it looks like there are 17 requests
11 for production you are refusing to answer.

12 And then we've got some
13 interrogatories. I don't want to put you in jail. I
14 mean, is there not a way we can do this so we don't
15 have to do that? You don't want me to do that.

16 MR. FERGUSON: No, I don't want you to
17 put me in jail. I don't think you have a legal ground
18 to put me in jail.

19 THE COURT: If I have a valid court
20 order that you refuse to comply with, then how else
21 can I --

22 MR. FERGUSON: It's not a valid court
23 order.

24 THE COURT: How can I --

25 MR. FERGUSON: It's a void court order.

1 THE COURT: Two appellate courts didn't
2 agree with you.

3 MR. FERGUSON: Well, I don't agree that
4 that's what happened, but just because they refuse to
5 do a writ of mandamus, it doesn't mean -- nobody wrote
6 an opinion on it.

7 THE COURT: Tell me why you think it's
8 void.

9 MR. FERGUSON: As a matter of law, it's
10 void, Your Honor, because there is no -- there are no
11 pleadings on file to support this.

12 THE COURT: There is a motion to compel
13 filed on 1-27, right?

14 MR. FERGUSON: And then he filed one on
15 2-20-2020, which would replace the one on 1-27-2020,
16 and if it replaced it, we never got notice. We didn't
17 get proper notice. He's got to give proper notice if
18 he's filing an amended motion to compel. He didn't
19 give proper notice.

20 He even admits the only way he is going
21 to get discovery is a motion for injunctive relief,
22 and there is no motion for injunctive relief on file.

23 MR. GHRIST: It was filed on 2-20.

24 THE COURT: His 2-20 filing references
25 his motion filed on 1-27, so it doesn't replace it.

1 It's incorporating it.

2 MR. FERGUSON: It states, Judgment
3 creditor herein files this, their motion to compel.
4 And it would show --

5 THE COURT: I'm looking at --

6 MR. GHRIST: Oh, I see. There is a
7 typographical error in that document. But that
8 doesn't invalidate everything else that happened.

9 THE COURT: This is what the actual --
10 it actually says, The defendant asked the court to
11 sign an order enjoining the plaintiff from
12 transferring the assets while the case was on appeal.

13 And then it says --

14 MR. FERGUSON: But that is not a motion
15 for injunctive relief.

16 THE COURT: Okay. But you still have a
17 motion to --

18 MR. FERGUSON: The only way to get
19 discovery is if you have a -- I don't even think you
20 can get it if you just follow a motion for injunctive
21 relief. I think you have to have a hearing. He's got
22 to present evidence, affidavits, a bond. Nothing has
23 happened.

24 THE COURT: Yeah, but this isn't even a
25 motion to compel. This is actually his attempt at a

1 motion for an injunction. This isn't a motion to
2 compel. If you read the paragraph.

3 MR. FERGUSON: It states their -- this
4 is their motion --

5 THE COURT: Yeah, but that's not what
6 that is. You know that's not right.

7 MR. FERGUSON: I don't know what's
8 right. I know this, that is not a motion for
9 injunctive relief. It doesn't follow the rules at
10 all.

11 THE COURT: Let me look at your order
12 here. Did you provide me an order on the motion for
13 contempt?

14 MR. GHRIST: I did. Let me see the
15 date. 7-20 is the filing date of the proposed order.
16 I put in there \$500 a day penalty noncompliance and/or
17 default on the injunctive motion. I think both would
18 be appropriate.

19 THE COURT: I think that -- should we
20 not allow time for the -- while it was on appeal or
21 during the mandamus process.

22 MR. GHRIST: Well, there was two
23 motions for an emergency stay of this court's order
24 filed. Both of those were denied. So there has not
25 actually been a stay in place, but you would have

1 discretion over that.

2 I waited, at Mr. Ferguson's request, to
3 file this until those were resolved. I don't think I
4 actually had to, given the motions for emergency stays
5 were all not granted, but just to make it easier, I
6 figured we could wait. I think it was a dilatory
7 tactic. I reviewed all of the petitions. They didn't
8 have appropriate citations. They didn't make sense.
9 I could barely follow them.

10 THE COURT: Okay. I'll take a look at
11 this. I wish we weren't doing this, Mr. Ferguson.

12 MR. FERGUSON: I wish we weren't
13 either. I wish we were following the law.

14 THE COURT: I wish the Appellate Court
15 would have come back and told me that I wasn't
16 following the law if I'm not.

17 MR. FERGUSON: We're going to end up
18 right back there if this happens. So --

19 THE COURT: Yes.

20 MR. FERGUSON: The rules are the rules,
21 Your Honor.

22 THE COURT: I agree with you. And I
23 think that if I do make a mistake, that's what the
24 Appellate Court would help me do is figure those out,
25 and in this case they didn't. But according to you

1 the Supreme Court and the Second Court of Appeals
2 don't know what they're doing, according to you.

3 MR. FERGUSON: I didn't say that, Your
4 Honor.

5 THE COURT: Well, what did you say?

6 MR. FERGUSON: I said it was sent there
7 and it came back. I don't know why they didn't rule
8 on it. I don't know why they didn't consider it.
9 There was nothing in writing of why they didn't.
10 Nobody said anything of why they didn't.

11 But I'm asking you to follow the law.
12 And I'm asking to follow the rules. And the rules
13 state very clearly that he has got to have an
14 injunction in place to be able to do this.

15 He doesn't even have a motion for
16 injunctive relief. And if he wants to say, well, I
17 have a motion for injunctive relief, then there should
18 have at least been a motion for injunctive relief
19 filed of record, and there isn't one.

20 A one-sentence saying he wants us to be
21 enjoined from dissipating assets, he has no evidence
22 anything is going on other than the normal course of
23 business.

24 He had all the records from the
25 previous court in the 17th. It's all real estate

1 related. So --

2 THE COURT: Why haven't we had an
3 injunction hearing?

4 MR. GHRIST: The rules state that you
5 are specifically authorized to do discovery for the
6 purpose of whether the injunction should issue.

7 MR. FERGUSON: Where?

8 MR. GHRIST: The rules state that you
9 do an injunction first and then do discovery over
10 whether the injunction should have issued in the first
11 place. That is backwards, and that is the wrong
12 order. It's discovery first and then an injunction
13 hearing. I have been waiting to get the discovery so
14 that we can hold an injunction hearing.

15 MR. FERGUSON: Your Honor, he doesn't
16 have a motion for injunctive relief.

17 MR. GHRIST: There is a motion on file
18 requesting injunctive relief. It does not have to
19 have the common law elements of an injunction, because
20 it's a statutory injunction authorized for this exact
21 purpose in the Civil Practice and Remedies Code, and
22 we have been over this multiple times.

23 MR. FERGUSON: Then produce the rules
24 that state --

25 MR. GHRIST: You can read them in the

1 motion.

2 THE COURT: Which motion?

3 MR. FERGUSON: That is my point right
4 there. "You can read them in the motion." There is
5 nothing in the motion. It's a one-sentence motion.

6 THE GHRIST: The motion to compel and
7 the supplement, which both had citations on all of the
8 relevant rules, both in the Civil Practice and
9 Remedies Court and in the appellate rules.

10 THE COURT: All right. I'll take a
11 look at it, and I'll send you an order.

12 MR. GHRIST: Thank you, Your Honor.

13 MR. FERGUSON: Thank you.

14 THE COURT: Have a good day.

15 (End of hearing)

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C E R T I F I C A T E

THE STATE OF TEXAS X

COUNTY OF TARRANT X

I, Christina Fett, Official Court Reporter in and for the 141st District Court, State of Texas, County of Tarrant, do hereby certify that the above and foregoing contains a true and correct transcription of all portions of evidence and other proceedings requested in writing by counsel for the parties to be included in this volume of the reporter's record in the aforementioned cause, all of which occurred in open court or in chambers and were reported by me.

I FURTHER CERTIFY that this reporter's record of the proceedings truly and correctly reflects the exhibits, if any, admitted by the respective parties.

I FURTHER CERTIFY that I have no financial interest in the matters shown herein, and that I am not related to any of the parties or their counsel.

I FURTHER CERTIFY that the total cost for the preparation of this reporter's record of the proceedings is \$140.00 and was paid by the Plaintiff.

WITNESS MY OFFICIAL HAND this the 22nd day of September, 2020.

/s/Christina Fett

Christina Fett, Texas CSR 4590

CSR Expires 7-31-22

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Official Court Reporter 141st District Court

REPORTER'S RECORD
VOLUME 1 OF 1 VOLUME
TRIAL COURT CAUSE NO. 067-311209-19

MBH REAL ESTATE, LLC, ET AL
Plaintiffs,
VS.
GHRIST LAW FIRM, PLLC, ET AL
Defendants.

) IN THE DISTRICT COURT
)
)
)
) TARRANT COUNTY, TEXAS
)
)
)
) 67TH JUDICIAL DISTRICT

MOTION TO HAVE J. MICHAEL FERGUSON *ET.AL.* HELD IN
CONTEMPT OF COURT AND FOR SANCTIONS

On the 19th day of November, 2020, the following
proceedings came on to be heard in the above-entitled
and numbered cause before the Honorable Donald J. Cosby,
Judge presiding, held in Fort Worth, Tarrant County,
Texas via Zoom video conference:

Proceedings reported by machine shorthand.

MONICA A. RITCHIE, CSR, RPR
OFFICIAL COURT REPORTER
67TH DISTRICT COURT

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1 {PROCEEDINGS VIA ZOOM}

2 THE COURT: I think we're here on a motion
00:00 3 to have Michael Ferguson, et al held in contempt of
00:00 4 court and sanctions and there's a response filed. And
00:00 5 let's go from there.

00:00 6 Mr. Ghrist, tell me what it is you're
00:00 7 seeking and Mr. Ferguson, you'll be able to respond
00:00 8 and...

00:00 9 MR. FERGUSON: Your Honor, I'm having a
00:00 10 hard time hearing. I don't know if it's mine or...

00:00 11 THE REPORTER: It sounds -- it sounds like
00:00 12 you're really far away. It's different than it has
00:01 13 been.

00:01 14 THE COURT: I don't have the microphone on.

00:01 15 THE REPORTER: Oh.

00:01 16 THE COURT: Can you hear me now?

00:01 17 THE REPORTER: Better. Yes, sir.

00:01 18 THE COURT: I turned on the microphone.

00:01 19 We're going to allow Mr. Ghrist to go first
00:01 20 and then Mr. Ferguson and you can go and tell me why I
00:01 21 should not and then I may have some questions since I'm
00:01 22 the new judge on this. And I'm really -- it sounds like
00:01 23 I'm being asked to look at what another judge did, so I
00:01 24 need to look at all this. Okay. All right.

00:01 25 Go ahead, Mr. Ghrist.

00:01 1 MR. GHRIST: Thank you, Your Honor. I'm
00:01 2 going to share my screen, if that's all right?
00:01 3 THE COURT: That's fine.
00:01 4 MR. GHRIST: Can y'all see that?
00:01 5 THE REPORTER: Yes.
00:01 6 THE COURT: Yeah.
00:01 7 MR. GHRIST: Okay. So this is an order
00:01 8 that was signed by Judge Chupp on May 26th of this year.
00:01 9 It states that the plaintiffs are ordered to comply with
00:01 10 the discovery requests that were served on them in
00:01 11 December of 2019.
00:02 12 This order was only signed after multiple
00:02 13 hearings over whether they should have to answer those
00:02 14 discovery requests, and they were ordered to do that.
00:02 15 After this order was signed, Mr. Ferguson
00:02 16 filed for a writ of mandamus and an emergency stay of
00:02 17 this order. That was denied by the Second Court of
00:02 18 Appeals and then the Texas Supreme Court denied it and
00:02 19 the plaintiffs have been in contempt of court since
00:02 20 May 26th of 2020 for failing to respond to the discovery
00:02 21 requests.
00:02 22 And I'm happy to go through the whole
00:02 23 history behind it, but basically we're asking that this
00:02 24 order be enforced and I do understand that this was
00:03 25 signed by Judge Chupp. I'm happy to address all of the

00:03 1 arguments that were made on both appeals and in all of
00:03 2 the prior motions again, and I think I'll probably go
00:03 3 ahead and summarize those since we have a new judge.
00:03 4 But then the issue is going to be what needs to happen
00:03 5 in order to get this resolved, and there's several
00:03 6 different options.

00:03 7 Okay. So this case is -- resulted in a
00:03 8 final judgment that's currently on appeal. The judgment
00:03 9 consisted mostly of sanctions and attorney's fees, which
00:03 10 don't have to be bonded on a supersedeas bond. So the
00:03 11 only bond that there is, is for court costs, which is
00:03 12 all they have to do under the rules.

00:03 13 However, the rules also explicitly state
00:04 14 that the judgment debtors can be ordered to refrain from
00:04 15 transferring or dissipating assets except in the
00:04 16 ordinary course of business while the case is on appeal,
00:04 17 which is what these discovery requests were related to
00:04 18 and which is why they were ordered to respond to the
00:04 19 discovery requests because we're seeking to have such an
00:04 20 injunction ordered.

00:04 21 So I just filed this document today and
00:04 22 it's just a list of all the cases that have been
00:04 23 previously cited in all of the previous motions and
00:04 24 responses. So there's nothing new here, but I thought
00:04 25 that we should probably review it again today.

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00:04 1 Texas Rule of Civil Procedure 24.2 states
00:04 2 that the judgment creditor's entitled to request an
00:05 3 injunction prohibiting the transfer or dissipation of
00:05 4 assets except in the ordinary course of business. This
00:05 5 is a copy of that rule.

00:05 6 Specifically, we're concerned with Part D,
00:05 7 which I've highlighted there. And it's pretty
00:05 8 straightforward. It just states that the trial court
00:05 9 can enjoin the debtor from transferring or dissipating
00:05 10 assets as long as they're allowed to continue to use
00:05 11 those assets in the ordinary course of business.

00:05 12 Then, I've added the official comments to
00:05 13 that rule because --

00:05 14 THE COURT: Mr. Ghrist, why do we need
00:05 15 discovery? Why can't you just seek an order telling him
00:05 16 don't move assets?

00:05 17 MR. GHRIST: Because there's case law
00:05 18 saying that you have to have a hearing on whether the
00:05 19 injunction should be issued, and I have to prove that
00:05 20 the injunction -- that there's a reason to issue such an
00:05 21 injunction.

00:05 22 There's some cases where there was a
00:06 23 company that was a Fortune 500 company with a billion
00:06 24 dollars in assets and a million dollar judgment, and
00:06 25 they were able to prove that there's no point in issuing

00:06 1 such an injunction.

00:06 2 But one of the things that could be done
00:06 3 and what's in the proposed orders that were filed if
00:06 4 they're not going to answer the discovery, the
00:06 5 injunction could just be granted because they've
00:06 6 defaulted on -- on the discovery related to the motion.

00:06 7 THE COURT: But didn't you -- did you --
00:06 8 did you say that the judgment -- I didn't -- I didn't
00:06 9 even focus on the judgment. But the judgment was just
00:06 10 for court costs?

00:06 11 MR. GHRIST: The judgment was for
00:06 12 sanctions, attorney's fees, and court costs.

00:06 13 THE COURT: Okay. And a supersedeas bond
00:06 14 was paid, right?

00:06 15 MR. GHRIST: Yes. It was about \$2,000 of
00:06 16 court costs on a judgment for about 160,000.

00:06 17 THE COURT: That -- okay. That's what --
00:07 18 okay. Thank you. Go ahead.

00:07 19 MR. GHRIST: I think I said earlier it was
00:07 20 the -- you know, the bond was about one percent of the
00:07 21 total judgment amount, but it may be a little less.
00:07 22 That --

00:07 23 THE COURT: Okay.

00:07 24 MR. GHRIST: Okay. So the reason I put the
00:07 25 official comment on here is because it states that the

00:07 1 former Rules 47 through 49 have been merged into Rule 24
00:07 2 because the next one we're going to look at is
00:07 3 authorizing the postjudgment discovery, which currently
00:07 4 references the rules that were previously combined.

00:07 5 Rule 621(a) provides that at any time --
00:07 6 and I've highlighted the relevant part there. At any
00:07 7 time after the judgment's rendered, regardless of
00:07 8 whether the plenary period has expired or not, the Court
00:07 9 can order discovery under Rules 47 and 49.

00:08 10 And then I've also highlighted the footnote
00:08 11 that said that this is now Rule 24, which is the rule
00:08 12 authorizing discovery -- well, sorry. The rule
00:08 13 authorizing a transfer or dissipation injunction. So
00:08 14 this is explicitly authorizing discovery related to the
00:08 15 exact motion that was filed related to this discovery.

00:08 16 Texas Civil Practice and Remedies Code
00:08 17 Section 52.006 says the same thing as Appellate Rule 24,
00:08 18 which is that the Court can order such an injunction.
00:08 19 And I thought it was important to talk about this rule
00:08 20 as well, because the beginning of the rule talks about
00:08 21 the supersedeas bond and then Subsection E is very clear
00:08 22 that nothing in this section prevents the trial court
00:09 23 from issuing an injunction.

00:09 24 So regardless of whether the bond is
00:09 25 posted, there can still be an injunction. Those are two

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00:09 1 separate issues.

00:09 2 And then this is a case, *In re Emeritus*
00:09 3 *Corp.*, which interprets those rules. Mr. Ferguson is
00:09 4 basically making the same argument that was the losing
00:09 5 argument in this case. They lost the argument. He's
00:09 6 already lost the argument in the Second Court of
00:09 7 Appeals, the Texas Supreme Court, and the previous court
00:09 8 that transferred this case here. And I don't -- I
00:09 9 haven't seen anything that would suggest that any
00:09 10 different results would ever occur.

00:09 11 And that's pretty -- pretty much it. I'm
00:09 12 happy, again, to go over the previous history of the
00:09 13 case, but we're not trying to retry the case. We're
00:09 14 just trying to get the discovery on the injunction.
00:09 15 We're asking for either -- now, as far as previous
00:10 16 orders related to this go, the plaintiffs were
00:10 17 previously sanctioned \$500 for failing to give these
00:10 18 discovery responses turned in.

00:10 19 That sanction was not sufficient to get any
00:10 20 compliance. So we're asking for either discovery
00:10 21 sanctions equivalent to the amount of attorney's fees,
00:10 22 which are shown on the affidavit that was filed, and
00:10 23 I'll put that up on the screen there.

00:10 24 This is a fee affidavit that was filed on
00:10 25 August 25th and that just states how much time and

00:10 1 energy went into the different hearings trying to get
00:10 2 this discovery done. And we're asking for them to
00:10 3 default on the injunction motion. In the alternative,
00:11 4 we're asking for civil -- civil penalties for contempt
00:11 5 of court. Mr. Ferguson could be incarcerated until he
00:11 6 purges himself of contempt by complying with the
00:11 7 discovery requests. These are all different remedies
00:11 8 that the Court could award, and we've submitted proposed
00:11 9 orders with the different ones on there.

00:11 10 So there's criminal contempt, which is six
00:11 11 months in jail and then there's civil fines, which have
00:11 12 to be paid to the Court and then there's discovery
00:11 13 sanctions, which are awarded to the movant and then
00:11 14 there's also a default. You can default on the motion.

00:11 15 And that -- and again, I'm happy to recover
00:11 16 all of what we covered in all of the previous hearings
00:12 17 in this case, but that's the gist of it right there.

00:12 18 THE COURT: Okay. Yeah, I don't want you
00:12 19 to rehash. I'm just trying to fully understand where
00:12 20 we're at and I have an idea. Okay.

00:12 21 Let me hear from Mr. Ferguson.

00:12 22 MR. FERGUSON: Your Honor, what we're
00:12 23 saying is that the order that Judge Chupp signed is a
00:12 24 void order, because the Court does not have continuing
00:12 25 jurisdiction other than what is set out under Texas Rule

00:12 1 of Appellate Procedure 24.3, which is the continuing
00:12 2 trial court jurisdiction. And on those, the continuing
00:13 3 jurisdiction, even after the trial, the Court's plenary
00:13 4 power expires. The trial court has continuing
00:13 5 jurisdiction to do the following: Order the amount and
00:13 6 type of security and decide the sufficiency of sureties
00:13 7 and if circumstances change, modify the amount and type
00:13 8 of security required to continue the suspension of a
00:13 9 judgment's execution.

00:13 10 And that is -- the jurisdiction of the
00:13 11 Court is limited to those motions. And what Mr. Ghrist
00:13 12 is not stating in the *Emeritus* case what happened in it
00:13 13 is that the judgment debtor had a \$17 million bond and
00:13 14 they filed a motion to file an alternative bond. And
00:13 15 during those proceedings, which the Court still had
00:13 16 plenary power, a motion for injunctive relief was filed
00:14 17 and it was granted.

00:14 18 So if an injunction had been granted in
00:14 19 this case before the plenary power expired, then the
00:14 20 Court would have continuing jurisdiction over that
00:14 21 injunction like in *Emeritus* and they allowed discovery
00:14 22 in *Emeritus* to verify that the judgment debtor was
00:14 23 complying with the injunction.

00:14 24 In this case, Mr. Ghrist does not even have
00:14 25 a motion for injunction on file. He filed a

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00:14 1 two-paragraph document that stated -- the title was
00:14 2 motion to enjoin, but in the body of it, it says that
00:14 3 it's a motion to compel.

00:14 4 And at that hearing, Judge Chupp stated on
00:14 5 the record that he was not going to compel discovery.
00:14 6 And later on we came back for a hearing and Judge Chupp
00:15 7 just ordered the discovery. So Judge Chupp has ordered
00:15 8 discovery for five years of back bank statements, which
00:15 9 I don't see how that can have anything to do with today
00:15 10 if they think that these assets are being dissipated.

00:15 11 And in this case, it's -- this is real
00:15 12 estate related matters that this case was about. So
00:15 13 everything has to be filed of public record. If you pay
00:15 14 a loan off, there's got to be a release of lien. If you
00:15 15 transfer it, there's got to be -- so there's public
00:15 16 records that Mr. Ghrist could go to, to see if there's
00:15 17 any of this dissipating or transferring of assets.

00:15 18 And Mr. Ghrist has offered no evidence.
00:15 19 What he's asking the Court to do is just give him a free
00:15 20 shot at us and get five years of back information.

00:16 21 But to go back to the jurisdiction, the
00:16 22 Court is limited. And in this case, there is no motion
00:16 23 for an injunction. There was never a hearing on a
00:16 24 motion for an injunction. All there was, was a motion
00:16 25 to compel.

00:16 1 And when we filed our bond, the cash bond,
00:16 2 then that suspended any collection efforts by -- by law.
00:16 3 And so based on that, Your Honor, Mr. Ghrist did not
00:16 4 have any right to get any discovery 'cause he did not
00:16 5 have an injunction. And nowhere in these rules does it
00:16 6 say that you can get discovery to see if you want to get
00:16 7 an injunction.

00:16 8 The *Emeritus* case is clear that the
00:16 9 discovery was granted to verify that they were complying
00:16 10 with an injunction that was already in place and because
00:16 11 it was already in place, the Court had continuing
00:16 12 jurisdiction over it.

00:16 13 But once the plenary power expires under
00:17 14 24.3, then those are the only motions that the Court
00:17 15 would have jurisdiction over, Your Honor. And so we're
00:17 16 just simply asking that the Court -- we don't think the
00:17 17 Court has anything -- any jurisdiction other than to
00:17 18 dismiss this.

00:17 19 And that's where we're at, Your Honor.

00:17 20 THE COURT: Mr. Ghrist, okay. It's obvious
00:17 21 the statute you stated, you know, said that an
00:17 22 injunction couldn't be issued -- said the discovery can
00:17 23 be related to that. Mr. Ferguson doesn't disagree
00:17 24 except he says it has to be done within the Court's
00:17 25 plenary power time period.

00:17 1 I don't -- I haven't studied this enough.
00:17 2 Does -- do the statutes make that determination that
00:17 3 there has to -- that all this has to be done before the
00:18 4 Court loses any kind of plenary power?

00:18 5 MR. GHRIST: No. The statute says that it
00:18 6 can be done any time after the rendition of judgment.
00:18 7 There's no -- and this is the reason why he lost in the
00:18 8 Second Court of Appeals, the Texas Supreme Court, and
00:18 9 with the prior judge is because there's no legal basis
00:18 10 whatsoever for this argument.

00:18 11 The discovery is specifically authorized at
00:18 12 any time after the rendition of the judgment. Any time
00:18 13 means literally what it says, any time. And there's no
00:18 14 argument to the contrary, no case law to the contrary,
00:18 15 none.

00:18 16 THE COURT: Mr. --

00:18 17 MR. GHRIST: It also even makes sense
00:18 18 because those rules are related to any postjudgment
00:18 19 discovery regardless of whether it's -- there's an
00:18 20 appeal pending or not. This is -- so it would make no
00:19 21 sense at all to be limited by the plenary period. That
00:19 22 would be like saying you can't do any postjudgment
00:19 23 discovery when the plenary period expires, which is
00:19 24 obviously not how it works.

00:19 25 Also -- but, you know, we did have a motion

00:19 1 on file. We had multiple hearings on these issues.
00:19 2 Mr. Ferguson's lost every hearing and that's because we
00:19 3 did have the motion on file. The discovery was directly
00:19 4 related to the motion, and we have not had a hearing on
00:19 5 the motion yet because I do have the burden of proof at
00:19 6 the hearing and I need the discovery.

00:19 7 Or the Court could go ahead and grant
00:19 8 the -- the injunction and then -- I mean, if they're not
00:19 9 going to produce discovery on the injunction, the Court
00:19 10 could go ahead and grant the injunction.

00:19 11 MR. FERGUSON: Your Honor, he would need to
00:19 12 have a verified pleading, affidavit, something to
00:20 13 support his motion for injunction. A bond would have
00:20 14 had to have been posted. There's all kinds of problems
00:20 15 here. And Mr. Ghrist is acting like we lost to the
00:20 16 Court of Appeals or the Supreme Court. They just didn't
00:20 17 do anything about it.

00:20 18 So it doesn't -- under the plain reading of
00:20 19 Texas Rule Appellate Procedure 24.3, it states
00:20 20 continuing trial court jurisdiction and it states what
00:20 21 the continuing jurisdiction is after the court's plenary
00:20 22 power expires. And that is for a motion to decide the
00:20 23 sufficiency of a bond, which Mr. Ghrist never filed. He
00:20 24 filed a document that stated we didn't post enough, so
00:20 25 we just posted what he's -- the difference. And he

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00:20 1 didn't file a motion stating that there were
00:20 2 circumstances changed to modify and he wouldn't even be
00:21 3 able to because we posted a cash bond. And so --

00:21 4 MR. GHRIST: I'm not arguing that the bond
00:21 5 was not posted. The -- the case law is pretty clear
00:21 6 that you don't have to bond attorney's fees and
00:21 7 sanctions. So we have a bond for about \$2,000 of court
00:21 8 costs and whether I agree with that or not, it's -- the
00:21 9 bond is fine. But that doesn't mean the injunction
00:21 10 doesn't apply.

00:21 11 THE COURT: And you're saying that in order
00:21 12 to get the -- Mr. Ferguson said you don't have a
00:21 13 verified pleading on file for an injunction. You
00:21 14 disagree?

00:21 15 MR. GHRIST: I have -- I have a motion on
00:21 16 file for an injunction under those code sections that we
00:21 17 just cited, which do not have any verification
00:21 18 requirements. I'm not asking for a temporary
00:21 19 restraining order either.

00:21 20 THE COURT: Right.

00:21 21 MR. GHRIST: An injunction -- a restraining
00:21 22 order does have a verification requirement. I'm not
00:21 23 asking for a restraining order.

00:21 24 THE COURT: I agree. A request for an
00:22 25 injunction, a temporary injunction does not require -- I

00:22 1 don't disagree. A temporary restraining order does.

00:22 2 MR. FERGUSON: But an injunction would
00:22 3 require an affidavit of supporting evidence to state why
00:22 4 they should be given --

00:22 5 MR. GHRIST: No. Injunctions are decided
00:22 6 on testimony on hearings live with cross-examination.
00:22 7 A -- motions for summary judgment are decided on
00:22 8 affidavits.

00:22 9 THE COURT: Right. Mr. Ghrist is right.
00:22 10 We have to have a hearing on the injunction. Albeit,
00:22 11 he's requested that I grant him his injunction right now
00:22 12 as -- as sanctions with respect to the motion to compel.
00:22 13 That's one of the three alternatives. Okay. All right.
00:22 14 What else, Mr. --

00:22 15 MR. GHRIST: That's -- that's all I have,
00:22 16 Your Honor. I'm -- yeah. Any of those alternatives,
00:22 17 they're all in the proposed orders that have been filed.

00:23 18 THE COURT: Okay. Hold off. Let me see
00:23 19 where the proposed order is.

00:23 20 MR. GHRIST: It's going to be the last two
00:23 21 documents on the list there.

00:23 22 THE COURT: On -- on the affidavit, the
00:23 23 ones that were filed with the affidavit?

00:23 24 MR. GHRIST: No, Your Honor. The proposed
00:23 25 orders that I'm referring to are the ones that were

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00:23 1 filed today, and it's the last two documents that were
00:23 2 filed in this case. I did have some previous proposed
00:23 3 orders on file, but they all have the wrong style, so I
00:24 4 would -- I would suggest only looking at the ones that
00:24 5 were filed today.

00:24 6 THE COURT: You know -- okay. That's -- I
00:24 7 only have one document that's been filed today and --
00:24 8 hold it. Oh, no. No. There they are. Okay. They
00:24 9 just popped up. Okay. Okay.

00:25 10 I think I got to have a hearing. I don't
00:25 11 think I can grant -- I mean, I guess I could grant the
00:25 12 injunction requested, but I'm not sure that I want to do
00:25 13 that.

00:25 14 Mr. -- Mr. Ferguson, I'm in agreement with
00:25 15 Mr. Ghrist that he's entitled to some relief here only
00:25 16 because there is a previous order, and I do believe
00:25 17 based on the statutes that he's shown me that we've got
00:25 18 to go forward -- that he can go forward with discovery.

00:25 19 The question I've got is to what is it that
00:25 20 I'm going to -- I'm going to issue a -- I'm not going to
00:25 21 find you in contempt at this time and throw you in jail.
00:25 22 I'm not going to do that to anybody right now.

00:25 23 I am going to find, though, that you are --
00:25 24 I'm going to grant the motion to compel. And I'm going
00:26 25 to find that you do already owe \$500.

00:26 1 Did you pay -- did he pay that \$500
00:26 2 earlier?

00:26 3 MR. GHRIST: He did not. He's already been
00:26 4 ordered -- we've already had a motion to compel and he
00:26 5 was already ordered to respond to the discovery and I
00:26 6 was awarded \$500. So I think the next penalty has to be
00:26 7 something more than that.

00:26 8 THE COURT: Here's what I'm going to do.
00:26 9 I'm going to take out the -- the portion contempt of
00:26 10 court that you're confined in the county jail, but I am
00:26 11 going to grant Mr. Ghrist attorney fees based upon the
00:26 12 affidavit. I want to look at that first. Civil
00:26 13 penalties, he's got a proposal of 500. I won't go for
00:26 14 500. I'm going to go for 200. Okay.

00:26 15 MR. FERGUSON: Your Honor, you do know that
00:26 16 Judge Chupp stated on the record that he was not going
00:26 17 to compel me?

00:26 18 MR. GHRIST: Your Honor, that is not true.

00:27 19 MR. FERGUSON: I'll share my screen with
00:27 20 you right here.

00:27 21 THE COURT: Then why did he sign an order?

00:27 22 MR. FERGUSON: I have no --

00:27 23 MR. GHRIST: Your Honor --

00:27 24 MR. FERGUSON: -- I have no clue why he
00:27 25 does what he does.

00:27 1 MR. GHRIST: We had a hearing and Judge
00:27 2 Chupp stated that he was going to give Mr. Ferguson an
00:27 3 additional 30 days to get his objections on file and he
00:27 4 was not going to compel him to reply until after we had
00:27 5 a hearing and he got an extra 30 days.

00:27 6 Then we had another hearing, which is the
00:27 7 hearing where he actually signed the order compelling
00:27 8 him. So Mr. Ferguson is citing you to an old hearing
00:27 9 where there was hearings after that. I don't understand
00:27 10 why he's even --

00:27 11 MR. FERGUSON: Your Honor, that is
00:27 12 incorrect and that is easily determined by the record.
00:27 13 So it states right here on Line 20, I said, there is no
00:27 14 motion -- I told him that we were here on a motion to
00:27 15 compel 'cause there's not been any hearing on an
00:27 16 injunction. And Judge Chupp said I'm not going to
00:28 17 compel you to answer discovery and then we have the next
00:28 18 hearing and --

00:28 19 MR. GHRIST: If you could read the next
00:28 20 line where it states what I just said.

00:28 21 MR. FERGUSON: It doesn't matter. He
00:28 22 stated he's not going to compel it.

00:28 23 THE COURT: Everybody be quiet. I'm going
00:28 24 to read it. The Court says on Line 20, I'm not going to
00:28 25 compel you to answer discovery. What I'm going to do

00:28 1 now that he has something on file that he can get
00:28 2 discovery on it, I think you should answer it within
00:28 3 30 days from today or you waive your objections. Make
00:28 4 your objections to that and he has -- and then scroll
00:28 5 down to the next screen.

00:28 6 He has got something on file that I think
00:28 7 complies with 60 -- 621(a) and 24. And so if you want
00:28 8 to object to the discovery that he sent you, then object
00:28 9 and we'll have a hearing on that. But I'm going to
00:28 10 consider your discovery filed or sent to him yesterday
00:29 11 when you filed your motion, because I don't think you
00:29 12 could send discovery until you filed a motion. Okay.
00:29 13 So that's that.

00:29 14 Now, Mr. Ghrist, you said you then had a
00:29 15 later hearing?

00:29 16 MR. GHRIST: Yes, Your Honor.

00:29 17 THE COURT: Okay.

00:29 18 MR. GHRIST: Multiple later hearings after
00:29 19 that.

00:29 20 THE COURT: And that was the basis for his
00:29 21 order compelling Mr. Ferguson to respond?

00:29 22 MR. GHRIST: Yes. The order compelling
00:29 23 Mr. Ferguson to respond was not signed as a result of
00:29 24 this hearing that we're reading. It was a subsequent
00:29 25 hearing after Mr. Ferguson did not file any objections

00:29 1 within the 30 days he was given.

00:29 2 THE COURT: Okay.

00:29 3 MR. FERGUSON: Your Honor, that is -- what
00:29 4 he's stating is simply not correct and it can be
00:29 5 verified by us looking at the record. We had this
00:29 6 hearing and right down here I said, if you don't mind, I
00:29 7 will submit an order and get it to Mr. Ghrist. The
00:29 8 Court said okay and then y'all can use whatever
00:29 9 procedure you have after that. I submitted an order and
00:30 10 the Court never signed the order.

00:30 11 THE COURT: Mr. Ferguson, what's the date
00:30 12 of that hearing? What's the date of that record showing
00:30 13 the hearing?

00:30 14 MR. FERGUSON: The 21st day of February
00:30 15 2020.

00:30 16 THE COURT: There was a motion to compel in
00:31 17 May of 2020.

00:31 18 MR. GHRIST: Exactly.

00:31 19 MR. FERGUSON: But that was the -- he filed
00:31 20 a supplemental motion. That's how we got the next
00:31 21 hearing after this hearing.

00:31 22 THE COURT: But there was an order signed
00:31 23 by Judge Chupp -- hold off. Don't anyone say
00:31 24 anything -- on that same day that you had the hearing
00:31 25 Judge Chupp signed an order to comply with the discovery

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00:31 1 requests served on December the 4th, 2019 referenced in
00:31 2 the motion to compel the discovery requests. As the
00:31 3 plaintiff failed to timely file objections thereto,
00:31 4 such -- such objections, if any, are waived.

00:31 5 So he's then said your motion to quash the
00:31 6 subpoenas are denied. That was all done in May and then
00:32 7 he assessed you \$500. Was that attorney fees? Wow.
00:32 8 Okay. So --

00:32 9 MR. FERGUSON: Your Honor, we had this
00:32 10 hearing in February and came back in May and that's when
00:32 11 he did it.

00:32 12 THE COURT: Right.

00:32 13 MR. FERGUSON: But he had told me in
00:32 14 February, I'm not going to compel you.

00:32 15 THE COURT: That was because he was giving
00:32 16 you a chance to file your answers and file objections.
00:32 17 If he had signed an order to compel you, your objections
00:32 18 probably would have been no good.

00:32 19 MR. FERGUSON: Okay. But on the record, he
00:32 20 stated that he's going to sign an order and if you look,
00:32 21 he never did sign the order that I submitted.

00:32 22 THE COURT: Well, that -- and listen,
00:32 23 that's -- I can't speak to that. I go by the record,
00:32 24 but I can't speak to the order that he signed on
00:32 25 May 26th in which he did compel you. So I -- I have to

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00:32 1 go with what's in the record. And what I'm showing on
00:32 2 my docket sheet that there was a hearing on May 26th,
00:33 3 2020, if I can read the writing, but apparently this
00:33 4 order was signed on May 26th.

00:33 5 So there was a motion to compel you to
00:33 6 respond to the discovery requests. I take it that those
00:33 7 were the ones sent out on December 4th of 2019 and then
00:33 8 that -- Mr. -- Mr. Ghrist, have you gotten any
00:33 9 information from Veritex or from Chase?

00:33 10 MR. GHRIST: Yes.

00:33 11 THE COURT: Okay. Okay. So I'm going
00:33 12 to -- I'm going to sign -- I'm going to go back and look
00:33 13 at this thing -- I'm going to issue an order with \$200 a
00:33 14 day starting tomorrow or the day after I sign the
00:33 15 judgment. Okay. Until those -- those are answered.

00:33 16 I will tell you that they need to be
00:33 17 answered within 30 -- I -- I'd say 45 days only because,
00:33 18 you know -- they've got to be answered. If at such
00:33 19 time -- well, it's going to be \$200 a day until you've
00:34 20 answered and then I'm only going to give you 45 days to
00:34 21 answer them. You need to answer them.

00:34 22 At which time, Mr. Ghrist, you may file
00:34 23 another motion at which that motion may request that I
00:34 24 deem your injunction's granted.

00:34 25 Does that make sense?

00:34 1 MR. GHRIST: Understood.

00:34 2 THE COURT: I've got to give you the
00:34 3 opportunity to answer the discovery one last time. Part
00:34 4 of this is because I'm the new judge. I'm not going to
00:34 5 throw you in jail at this time. But let -- so the
00:34 6 motion to compel is granted.

00:34 7 And let me just look at this order and --
00:34 8 Mr. Ghrist, and get it signed. But it's going to be
00:34 9 \$200 a day starting the day after and you have 45 days
00:34 10 starting the day after I sign the order to get him the
00:34 11 documents at which time then Mr. Ghrist may seek and
00:34 12 file his motion -- he already has his motion for
00:34 13 injunction. Okay. All right. That's my ruling.

00:35 14 Is there any other ruling -- any other
00:35 15 thing you need? Anybody?

00:35 16 MR. FERGUSON: No, Your Honor --

00:35 17 MR. GHRIST: -- no, Your Honor.

00:35 18 THE COURT: Okay. With that, Court stands
00:35 19 in recess.

00:35 20 (Proceedings concluded at 2:38 p.m.)

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C E R T I F I C A T E

THE STATE OF TEXAS)

COUNTY OF TARRANT)

I, MONICA A. RITCHIE, Official Court Reporter in and for the 67th District Court of Tarrant County, State of Texas via Zoom video conference, do hereby certify that the above and foregoing contains a true and correct transcription of all portions of evidence and other proceedings requested in writing by counsel for the parties to be included in this volume of the electronic reporter's record, in the aforementioned cause, all of which occurred in open court or in chambers and were reported by me.

I FURTHER CERTIFY that this electronic reporter's record of the proceedings truly and correctly reflects the exhibits, if any, offered and/or admitted by the respective parties.

I FURTHER CERTIFY that the total cost for the preparation of this electronic reporter's record is \$162.00 and was paid by Plaintiffs.

WITNESS MY OFFICIAL HAND this the 20th day of November, 2020.

/s/ Monica A. Ritchie
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MONICA A. RITCHIE, CSR, RPR
OFFICIAL COURT REPORTER
67TH DISTRICT COURT

REPORTER'S RECORD
VOLUME 1 OF 1 VOLUME
TRIAL COURT CAUSE NO. 067-311209-19

MBH REAL ESTATE, LLC, ET AL
Plaintiffs,
VS.
GHRIST LAW FIRM, PLLC, ET AL
Defendants.

) IN THE DISTRICT COURT
)
)
)
) TARRANT COUNTY, TEXAS
)
)
)
) 67TH JUDICIAL DISTRICT

SECOND MOTION TO HAVE J. MICHAEL FERGUSON *ET.AL.* HELD IN
CONTEMPT OF COURT AND FOR SANCTIONS
and
PLAINTIFF MOTION TO QUASH RECORD REQUEST SUBPOENA AND
NOTICE OF INTENT TO TAKE WRITTEN QUESTIONS TO J.P.
MORGAN CHASE BANK, N.A. AND MOTION FOR PROTECTIVE ORDER

On the 15th day of March, 2021, the following
proceedings came on to be heard in the above-entitled
and numbered cause before the Honorable Donald J. Cosby,
Judge presiding, held in Fort Worth, Tarrant County,
Texas via Zoom video conference:

Proceedings reported by machine shorthand.

MONICA A. RITCHIE, CSR, RPR
OFFICIAL COURT REPORTER
67TH DISTRICT COURT

A P P E A R A N C E S

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{PROCEEDINGS VIA ZOOM}

THE COURT: We're here on a couple of matters. And then I notice that Mr. -- somehow another I got a late filed response. It's not a late filed. There's no requirement. But I got a midnight filing today of some kind of response to Defendants' Motion to Compel. I don't know if Mr. Ghrist has had an opportunity to look at it. I really haven't. It's too long.

But let's go ahead and take up the motions and then let's see where we're at.

Mr. Ghrist, the floor is yours. I...

MR. GHRIST: Thank you, Your Honor. So this is a continuation of the previous hearings we've had on this where there's postjudgment discovery related to whether a transfer of dissipation injunction should be issued. And they've been ordered to respond.

On the same day that that order was signed, there was -- I received responses, but the responses had a lot of problems with them. There was a lot of things missing, a lot of the interrogatories, the answers were either nonresponsive or evasive.

So we have a list in the motion of all the problems.

THE COURT: Yeah, I've looked --

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00:01 1 MR. GHRIST: I've read the response -- I'm
00:01 2 sorry, Your Honor.

00:01 3 THE COURT: Seven, 8, 11, 12, 15, 25, and
00:01 4 then Production Responses 2, 5, 6, 7, 8, 9, 10, 11, 12,
00:01 5 13, 14, 15, 16. And then also in that same motion, he
00:01 6 had a motion to enjoin the plaintiffs from transferring
00:02 7 assets. That was --

00:02 8 MR. GHRIST: Right.

00:02 9 (Simultaneous conversation.)

00:02 10 MR. GHRIST: That's been pending for about
00:02 11 a year now and all this discovery relates to that.

00:02 12 THE COURT: And a lot of it -- okay. I've
00:02 13 pretty much looked at everything, but basically what
00:02 14 you're saying is the information given was incomplete
00:02 15 and also you lack the raw data from the QuickBooks.

00:02 16 In other words, you -- the plaintiff just
00:02 17 submitted summaries of what he believed was responsive
00:02 18 pursuant -- for summaries of the QuickBooks information
00:02 19 is my understanding; is that correct?

00:02 20 MR. GHRIST: Correct.

00:02 21 THE COURT: Okay. All right. Go ahead,
00:02 22 though. I mean, I --

00:02 23 MR. GHRIST: Some of this is very
00:02 24 straightforward. Like on Production Request No. 2, the
00:02 25 response says there's a file called

00:02 1 NoteSmithFlashDrive.Zip that's being produced. I never
00:02 2 got the file, and I haven't been able to get any
00:02 3 explanation for when I'm going to get it or why it
00:03 4 wasn't produced like it said it would be. And I've read
00:03 5 the response, and I didn't see anything in the response
00:03 6 about that issue either.

00:03 7 When I tried to conference with
00:03 8 Mr. Ferguson on it, he told me that I already got
00:03 9 everything and then put several insulting things in
00:03 10 there that had nothing to do with anything. I don't
00:03 11 know -- that didn't tell me anything about when that
00:03 12 file is going to be produced or why it wasn't produced.

00:03 13 THE COURT: Okay. So in other words, you
00:03 14 got -- you got some type of response; it just wasn't
00:03 15 what you requested?

00:03 16 MR. GHRIST: Yes. There was words written
00:03 17 down on each of the interrogatories. Some of them were
00:03 18 responsive. Not -- I'm not complaining about all of
00:03 19 them, but a lot of them were not responsive. And the
00:03 20 production -- so I drafted a proposed order. If we get
00:03 21 the bank statements that we're requesting and the
00:04 22 QuickBooks files and the NoteSmith file, then I think
00:04 23 that's everything there is.

00:04 24 I don't think I'm ever going to get
00:04 25 responsive interrogatory responses. I think I would

00:04 1 like to get that, but I doubt it's ever going to happen.
00:04 2 So I think the best we could hope for is getting the
00:04 3 QuickBooks file, the bank statements, and the NoteSmith
00:04 4 file.

00:04 5 THE COURT: Okay.

00:04 6 MR. GHRIST: And then we're also asking
00:04 7 that they be defaulted on the motion. The previous
00:04 8 order that the Court signed said that if the responses
00:04 9 were not done within 45 days, then they would default on
00:04 10 the motion.

00:04 11 THE COURT: Okay.

00:04 12 MR. GHRIST: And even if they default on
00:04 13 the motion, I still need to know whether that transfer
00:04 14 dissipation injunction's been complied with or not, so
00:04 15 I'm still going to need the discovery. But at this
00:04 16 point, I think they should default on the motion.
00:04 17 That's specifically what they were warned would happen.

00:05 18 THE COURT: Okay. Let me hear from
00:05 19 Mr. Ferguson.

00:05 20 MR. GHRIST: Yeah.

00:05 21 MR. FERGUSON: Your Honor, I'm asking that
00:05 22 we abate it, because Mr. Ghrist is not telling the
00:05 23 truth. They asked for five years worth of financial
00:05 24 documents. They got 18,000 pages from Chase Bank. We
00:05 25 gave them the reports that we did in the previous court

00:05 1 where we reported every month.

00:05 2 As far as the interrogatories under 197.2,
00:05 3 if there are documents that you can point to that give
00:05 4 the same answer, then that's a responsive answer for the
00:05 5 interrogatory and that's under 197.2 of the Texas Rules
00:05 6 of Civil Procedure.

00:05 7 So we have fully complied with this. And
00:05 8 what Mr. Ghrist is really doing is working with Caleb
00:06 9 Moore in the other case, and he turned all that
00:06 10 information over to Caleb Moore. And then he sent the
00:06 11 subpoena, which is of record with the Court, Your Honor,
00:06 12 that he filed on 1/26/21, I believe is the date of that
00:06 13 one.

00:06 14 And in that subpoena, if you look on Page
00:06 15 2, Your Honor, Ian Ghrist asked Chase Bank for
00:06 16 information on me personally. And in that request, they
00:06 17 asked for every account that I'm on and then they also
00:06 18 asked for information about Ferguson & Associates, which
00:06 19 I'm not a party to the lawsuit, neither is Ferguson &
00:06 20 Associates.

00:06 21 And if you -- under the Texas Finance Code,
00:06 22 Mr. Ghrist is required to send notice to me, Ferguson &
00:06 23 Associates and ask for permission to get this
00:07 24 information. And if we don't, then he's required to go
00:07 25 to court and get it, an order ordering it.

00:07 1 So -- but Mr. Ghrist didn't do that and the
00:07 2 courts are just letting him do whatever he wants without
00:07 3 any basis at all. And so he now has my personal social
00:07 4 security number, which he's disclosed to a third party.
00:07 5 He has disclosed information on other entities to a
00:07 6 third party without permission, which is in violation of
00:07 7 the federal privacy rights act. And it's actually a
00:07 8 felony, Your Honor, when they do that. And Caleb Moore
00:07 9 and Ian Ghrist have done it.

00:07 10 Your Honor, it's a -- the -- we have filed
00:08 11 in this court before --

00:08 12 THE COURT: Mr. Ferguson -- Mr. Ferguson,
00:08 13 I -- I -- I got to tell you, I'm lost. I got put into
00:08 14 this case on a postjudgment and that's all -- that's all
00:08 15 I understand. I don't understand what Caleb Moore's
00:08 16 involvement or anything like that. Again, I haven't
00:08 17 read your lengthy thing that you filed early -- early
00:08 18 this morning.

00:08 19 And I -- all I know is that Mr. -- we had a
00:08 20 hearing. I ordered certain documents. I said at 200 --
00:08 21 \$200 a day for any -- if they're not produced within a
00:08 22 certain time. I thought that's all we're here about.

00:08 23 Now, I understand we're also here about
00:08 24 motion to quash records regarding subpoena duces tecum
00:08 25 on written questions dealing with you personally. I --

00:08 1 I -- we'll take that up, but you're asking for an
00:08 2 abatement on Mr. Ghrist's request on something we've
00:08 3 already heard.

00:08 4 MR. FERGUSON: No. You -- if you don't
00:08 5 know what's going on, then you don't realize we never
00:08 6 even have had a hearing. There's never been a hearing
00:09 7 for an injunctive hearing.

00:09 8 THE COURT: Well, now wait a minute. I
00:09 9 read -- I read Judge Chupp's rulings on some of this
00:09 10 previous in getting familiar, and I believe that's the
00:09 11 same issue you raised before, if I'm not mistaken.

00:09 12 MR. FERGUSON: Exactly is, but it doesn't
00:09 13 mean that we don't have -- my clients have a right to
00:09 14 have their right to due process. We have a right to
00:09 15 have a hearing --

00:09 16 THE COURT: Wait a minute. Time out. Time
00:09 17 out. Your clients. I'm sorry. I thought we're looking
00:09 18 at -- who are the defendants? It's a LLC --

00:09 19 MR. FERGUSON: It's Anson Financial, MBH
00:09 20 Real Estate, AFI Loan Servicing, and J. Michael
00:09 21 Ferguson, P.C.

00:09 22 THE COURT: Okay.

00:09 23 MR. FERGUSON: So those are my client. And
00:09 24 so yes, Judge Chupp did not give a hearing. We -- when
00:09 25 we filed -- and if you look at the timeline of this is

00:10 1 we filed --

00:10 2 THE COURT: Time out. Time out. Didn't
00:10 3 you take this up on mandamus four times on that same
00:10 4 issue?

00:10 5 MR. FERGUSON: I did, Your Honor, but
00:10 6 nobody's written an opinion and the law is very clear if
00:10 7 a court does not state anything about it, then it's as
00:10 8 though it never happened. So this has never happened.
00:10 9 So --

00:10 10 MR. GHRIST: -- order signed dismissing
00:10 11 those.

00:10 12 MR. FERGUSON: They didn't hear it. So
00:10 13 there is no -- there is no --

00:10 14 MR. GHRIST: I got a document in the mail
00:10 15 from the Court of Appeals saying they were dismissing
00:10 16 that mandamus, multiple mandamuses. I got an order on
00:10 17 each one.

00:10 18 MR. FERGUSON: Did they do an opinion on
00:10 19 it? No.

00:10 20 THE COURT: Well, they don't have to write
00:10 21 an opinion on every mandamus.

00:10 22 MR. FERGUSON: If they don't, then it's as
00:10 23 though it didn't happen. You're right, they don't have
00:10 24 to. If you send it to the Supreme Court, which they
00:10 25 hear about ten percent of the cases, that doesn't mean

00:10 1 you didn't have a valid reason. It's just they didn't
00:11 2 hear that particular matter.

00:11 3 THE COURT: So doesn't the order stand?

00:11 4 MR. GHRIST: Yeah.

00:11 5 THE COURT: The order stands --

00:11 6 MR. FERGUSON: No. If you don't have
00:11 7 subject matter jurisdiction, which you do not, Your
00:11 8 Honor, have subject matter jurisdiction, that is never
00:11 9 waived or anything. And the Court's plenary power had
00:11 10 expired, and Mr. Ghrist is just simply lying to the
00:11 11 Court.

00:11 12 What the -- the case under *Emeritus* states.
00:11 13 The only way that this Court can have continuing
00:11 14 jurisdiction would be under 24.4 or 24.3. And the only
00:11 15 two things that could be heard would be the sufficiency
00:11 16 of the bond and -- and I don't have that right in front
00:11 17 of me right now, Your Honor, but that's --

00:11 18 THE COURT: Mr. Ferguson, have you thought
00:11 19 about turning this over to another attorney since you're
00:11 20 individually involved in it like this to get a -- to get
00:11 21 a --

00:11 22 MR. FERGUSON: I have had other attorneys
00:11 23 and nobody wants to be involved with me anymore, because
00:12 24 of what's going on here. It should throw up red flags
00:12 25 to the Court why have two judges recused themselves on

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00:12 1 their own --

00:12 2 THE COURT: Yeah.

00:12 3 MR. FERGUSON: -- off this case?

00:12 4 Something's wrong.

00:12 5 THE COURT: No. They don't want to deal
00:12 6 with you -- or -- or this case or Mr. Ghrist. They just
00:12 7 don't want to deal with y'all. They've had enough. And
00:12 8 I understand that. It's just --

00:12 9 MR. FERGUSON: But you're not even trying
00:12 10 to listen to the timeline to see if the -- if the law is
00:12 11 correct --

00:12 12 THE COURT: -- ruled on the time. I looked
00:12 13 at -- I looked at the order and the order -- Judge
00:12 14 Chupp's order clearly dismissed your claims. If I'm --

00:12 15 MR. FERGUSON: Your Honor, the Court did
00:12 16 not have subject matter jurisdiction. Do you agree that
00:12 17 if they don't have subject matter jurisdiction that the
00:12 18 order is void?

00:12 19 THE COURT: I -- and I think you've tried,
00:12 20 right? And it's -- they've already ruled on it.

00:12 21 MR. FERGUSON: Your Honor, I have a right
00:12 22 to aggressively represent my client. And what's going
00:12 23 on here is wrong, because --

00:12 24 (Simultaneous conversation.)

00:13 25 MR. FERGUSON: -- you're not even trying to

00:13 1 read the law. You're not even trying to --

00:13 2 THE COURT: -- if the appellate court has
00:13 3 already ruled on it, what more do I do? What more do I
00:13 4 do if the appellate courts have already ruled on it?

00:13 5 MR. FERGUSON: We could take a few minutes
00:13 6 and just lay out the timeline.

00:13 7 THE COURT: No. I'm not going to take up
00:13 8 my time with a bunch of stuff the Court of Appeals has
00:13 9 ruled on.

00:13 10 MR. FERGUSON: They haven't ruled on it.

00:13 11 THE COURT: Have you done --

00:13 12 MR. FERGUSON: -- as a matter of law, they
00:13 13 have not ruled on it.

00:13 14 THE COURT: Have you done anything? That's
00:13 15 what I'm saying. Give it to someone else instead of you
00:13 16 trying to represent yourself.

00:13 17 MR. FERGUSON: Okay. What I'm asking the
00:13 18 Court to do is follow the law. Okay. I've had
00:13 19 attorneys involved in this and nothing has gone -- we
00:13 20 can just let it go at that. We can get the Attorney
00:13 21 General involved in this now --

00:13 22 THE COURT: -- they're not going to involve
00:13 23 themselves in this, sir.

00:13 24 MR. FERGUSON: They will involve themselves
00:14 25 because of what Ghrist and Caleb Moore did. That is --

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00:14 1 has the jurisdiction over that.

00:14 2 THE COURT: I'm -- listen, I -- okay. I'm
00:14 3 not commenting on that.

00:14 4 MR. FERGUSON: Well, it can't hurt.

00:14 5 THE COURT: I don't know. I mean, believe
00:14 6 me, I've only been at it from the -- from the -- what is
00:14 7 this our second hearing on this? And -- and all I know
00:14 8 is that there's -- it's a postjudgment situation, is it
00:14 9 not?

00:14 10 MR. FERGUSON: No, it's not. This is -- we
00:14 11 superseded the -- the judgment and once it's superseded,
00:14 12 all collection efforts, all discovery is supposed to
00:14 13 come to a halt.

00:14 14 THE COURT: Where is the Court of...

00:14 15 Mr. Ghrist, where is the Court of Appeals
00:14 16 on whatever he appealed? Is it --

00:14 17 MR. GHRIST: They -- they issued an opinion
00:14 18 affirming the judgment and -- but the mandamus has not
00:14 19 issued yet. And the Supreme Court petition deadline is
00:14 20 in about two weeks.

00:14 21 THE COURT: Okay.

00:14 22 MR. GHRIST: But, you know, we've been
00:15 23 through so many times. The rules specifically authorize
00:15 24 discovery related to transfer of dissipation
00:15 25 injunctions, and I've been through this in at least four

00:15 1 other hearings. All -- every judge has issued the same
00:15 2 ruling.

00:15 3 It is completely not true that the Court of
00:15 4 Appeals didn't do anything. They dismissed those
00:15 5 mandamuses. They've signed an order on that. I -- I
00:15 6 don't think they have to write an opinion, but...

00:15 7 MR. FERGUSON: They do.

00:15 8 THE COURT: They don't. No, they usually
00:15 9 don't.

00:15 10 MR. GHRIST: Not on a mandamus.

00:15 11 THE COURT: They just say denied.

00:15 12 MR. FERGUSON: If they don't write an
00:15 13 opinion, Your Honor, it's as though it did not happen.
00:15 14 I'll send you the law. Okay.

00:15 15 THE COURT: Then why don't you -- why don't
00:15 16 you ask them to write an opinion? Show them the law --

00:15 17 MR. FERGUSON: I put in the motion to abate
00:15 18 that I'm going to file a motion to have them review
00:15 19 this.

00:15 20 THE COURT: Well, wait a minute. We've
00:15 21 been at this for how long and you still haven't done it
00:15 22 yet?

00:15 23 MR. FERGUSON: How many mandamuses have I
00:15 24 filed?

00:15 25 THE COURT: Like seven, five, six, seven.

00:16 1 MR. FERGUSON: The way I read the rules,
00:16 2 they will have to hear a -- the motion.

00:16 3 MR. GHRIST: I think -- I think three or
00:16 4 four on this. Maybe seven total in the history of
00:16 5 litigation, but...

00:16 6 THE COURT: All right. I -- I...

00:16 7 MR. FERGUSON: Your Honor, okay. I'm just
00:16 8 asking for -- you can just yea or nay on the motion to
00:16 9 abate it. I get what you're saying, but I'm asking you
00:16 10 to follow the law --

00:16 11 THE COURT: -- but the problem is you
00:16 12 haven't set the motion to abate for hearing. He's
00:16 13 entitled to three days' notice.

00:16 14 MR. FERGUSON: Well, if --

00:16 15 THE COURT: -- which --

00:16 16 MR. FERGUSON: -- if there is no subject
00:16 17 matter jurisdiction, I still have the plea to the
00:16 18 jurisdiction. And I'm telling you, the Court still
00:16 19 doesn't have subject matter jurisdiction over this
00:16 20 matter. So I'm asking the Court to -- which the Court
00:16 21 can only dismiss it.

00:16 22 THE COURT: What --

00:16 23 MR. FERGUSON: -- if they have no subject
00:16 24 matter jurisdiction, that's the only right the Court has
00:17 25 to do is dismiss it and then we can go from there.

00:17 1 But as -- I -- it doesn't even bother you
00:17 2 that he takes and is misrepresenting to the Court why
00:17 3 he's wanting five years worth of discovery. Nobody even
00:17 4 looked at that.

00:17 5 Judge Chupp didn't care. He just threw it
00:17 6 out there.

00:17 7 THE COURT: No. Listen, I care about
00:17 8 everything I do. I'm -- I understand postjudgment
00:17 9 discovery. And let me tell you, there's a lot of
00:17 10 latitude.

00:17 11 I've represented a bank for eight years, so
00:17 12 I fully understand postjudgment discovery having spent a
00:17 13 good portion of -- all eight years during the failed
00:17 14 bank side, Mr. Ferguson. So don't tell me. Okay.

00:17 15 All I need for you to do is follow the
00:17 16 rules yourself. And you're saying they need an opinion,
00:17 17 the Court of Appeals has to issue an opinion, then ask
00:17 18 them to do an opinion. How long has it been after each
00:17 19 one of those mandamuses are denied, you haven't followed
00:17 20 up and asked for an opinion?

00:18 21 I think there's a -- there's a concern I
00:18 22 have that this could be a delay. And the other thing
00:18 23 is, is to put money -- you know, there's requirements.
00:18 24 All you got to do is follow the requirements.

00:18 25 MR. FERGUSON: Your Honor, I posted a cash

00:18 1 bond.

00:18 2 THE COURT: What?

00:18 3 MR. FERGUSON: I posted a cash bond, a
00:18 4 supersedeas.

00:18 5 What rule do you feel I have not followed?

00:18 6 THE COURT: I -- you know what, I don't
00:18 7 know. I'm not -- I'm not looking at this. All I know
00:18 8 is that this postjudgment issue was decided upon by John
00:18 9 Chupp and you took it up on mandamus. They denied the
00:18 10 mandamus. All I'm saying is, I'm -- I'm just hearing
00:18 11 postjudgment stuff right now. You're saying --

00:18 12 MR. FERGUSON: -- you can't hear --

00:18 13 THE COURT: -- jurisdiction --

00:18 14 MR. FERGUSON: -- under the Texas Rules of
00:18 15 Appellate Procedure, the Court cannot hear postjudgment.
00:18 16 Under 621(a), there cannot be any postjudgment
00:18 17 discovery.

00:18 18 THE COURT: Where are we on the Court of
00:18 19 Appeals on your appellate matter?

00:18 20 MR. GHRIST: Oh...

00:18 21 THE COURT: Have you filed a brief or
00:19 22 anything, Mr. Ferguson, or anything?

00:19 23 MR. GHRIST: They've already issued an
00:19 24 opinion.

00:19 25 THE COURT: That's what I thought.

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00:19 1 MR. GHRIST: But we're waiting on the
00:19 2 mandamus. He still has some time left on his Supreme
00:19 3 Court petition.

00:19 4 THE COURT: Yeah, but that's a couple what,
00:19 5 maybe 30 days?

00:19 6 MR. GHRIST: A couple weeks.

00:19 7 MR. FERGUSON: Your Honor, the rules are
00:19 8 clear you don't get to do --

00:19 9 MR. GHRIST: I think --

00:19 10 MR. FERGUSON: -- any discovery or
00:19 11 collection effort when it's been superseded.

00:19 12 MR. GHRIST: I think I should point out
00:19 13 that there's a specific exception that applies to
00:19 14 transfer of dissipation injunctions, which Mr. Ferguson
00:19 15 is ignoring. And also that subject matter jurisdiction
00:19 16 doesn't actually relate to anything we're talking about.

00:19 17 What he's really talking about is plenary
00:19 18 power, which is not the same as subject matter
00:19 19 jurisdiction, but there's -- the rules specifically have
00:19 20 an exception for this exact issue.

00:19 21 MR. FERGUSON: No, they do not.

00:19 22 MR. GHRIST: I really don't want to talk
00:19 23 about that anymore, because we've -- I feel like we're
00:19 24 beating a dead horse on that subject.

00:20 25 MR. FERGUSON: And we're going to continue

00:20 1 until somebody -- if you look -- if you read *Emeritus*,
00:20 2 Your Honor, that case --

00:20 3 THE COURT: Two other judges didn't look at
00:20 4 this; is that what you're saying?

00:20 5 MR. FERGUSON: Yes. There's only been one
00:20 6 other judge, Judge Chupp. And you're telling me on the
00:20 7 record --

00:20 8 MR. GHRIST: -- judges on the Court of
00:20 9 Appeals.

00:20 10 MR. FERGUSON: Nobody has written an
00:20 11 opinion.

00:20 12 THE COURT: I thought the Court of Appeals
00:20 13 wrote an opinion. Did they deny your appeal?

00:20 14 MR. FERGUSON: Nobody has written an
00:20 15 opinion on this issue, Your Honor.

00:20 16 THE COURT: All right.

00:20 17 MR. GHRIST: The opinion was on the -- not
00:20 18 on the mandamus. It was on the underlying judgment.

00:20 19 THE COURT: Right. Okay. So they made
00:20 20 their decision on the underlying judgment, right?

00:20 21 MR. GHRIST: Yes --

00:20 22 MR. FERGUSON: -- but that's not what --
00:20 23 that's not what we're here about.

00:20 24 THE COURT: Okay. So what's your next --
00:21 25 and you're saying that you filed mandamuses to stop the

00:21 1 postjudgment, but if the Court of Appeals turned around
00:21 2 and ruled on the judgment and affirmed the judgment...

00:21 3 I'm lost here, Mr. Ferguson. Help me out.

00:21 4 MR. FERGUSON: 18,000 pages of information
00:21 5 from Chase have already been turned over to Ghrist and
00:21 6 he turns it over to a third party, which is a felony,
00:21 7 but that doesn't seem to bother anybody. It should.

00:21 8 THE COURT: I don't know that by you just
00:21 9 saying that and that's -- I'm sorry.

00:21 10 MR. FERGUSON: Okay. I gave you Texas
00:21 11 Finance Code Section 59 is what tells you what he has to
00:21 12 if it's a third party. And he came into this court and
00:21 13 represented --

00:21 14 MR. GHRIST: That's absolutely not what
00:21 15 that says, but we can talk about it, I guess.

00:21 16 THE COURT: Let him finish.

00:21 17 So what -- you're asking me to abate my
00:21 18 decision on this until what point, Mr. Ferguson?

00:22 19 MR. FERGUSON: Until the judgment --
00:22 20 there's a mandate that comes down from the appellate
00:22 21 court. This is not postjudgment discovery. A
00:22 22 supersedeas bond has been paid, and he cannot do
00:22 23 discovery except for in a net worth proceeding, which we
00:22 24 don't have. That's in the *Emeritus* case. It's also
00:22 25 in --

00:22 1 THE COURT: Okay --

00:22 2 MR. FERGUSON: -- in --

00:22 3 THE COURT: Did the Court of Appeals --
00:22 4 okay. I see what you're saying. You're saying the
00:22 5 mandate which affirmed Mr. Ghrist's judgment against
00:22 6 you, right, when you say it has not been issued?

00:22 7 MR. FERGUSON: It has not been issued.

00:22 8 THE COURT: Okay. All right.

00:22 9 MR. FERGUSON: And they're letting him do
00:22 10 the -- I mean, discovery's been going on for a year.
00:22 11 And even when -- when I do comply, he comes back and
00:22 12 tells you I didn't. He got tax returns. He got P&Ls.
00:22 13 I can't help it if he doesn't know how to read a tax
00:23 14 return. He wants to know if money's been dispersed.

00:23 15 And I know you don't know this, but he
00:23 16 represented Cocker while he was still representing
00:23 17 Anson.

00:23 18 THE COURT: Mr. -- Mr. -- Mr. Ferguson, I
00:23 19 -- well, hold it. I'm sorry. Just wait a minute.

00:23 20 Mr. Ghrist, how much money are we talking
00:23 21 about that he owes?

00:23 22 MR. GHRIST: On -- on this case, right, not
00:23 23 the other case?

00:23 24 THE COURT: Yeah. On -- yeah --

00:23 25 MR. GHRIST: On this case?

00:23 1 THE COURT: Yeah.

00:23 2 MR. GHRIST: With postjudgment interest,
00:23 3 it's -- right now and the postjudgment sanctions about
00:23 4 170,000.

00:23 5 THE COURT: Okay. Is that the one -- okay.
00:23 6 And I don't have everything in front of me. Is that the
00:23 7 one that the Court of Appeals issued a ruling, but they
00:23 8 haven't issued a mandate?

00:23 9 MR. GHRIST: Correct.

00:23 10 THE COURT: 170 roughly? Okay. All right.
00:23 11 But they ruled in your favor; they just haven't issued a
00:23 12 mandate?

00:23 13 MR. GHRIST: Right.

00:23 14 THE COURT: Okay. And that's the one we're
00:23 15 doing -- that's the one he's saying his supersedeas bond
00:23 16 or cash has deferred until the mandate issues?

00:24 17 MR. GHRIST: That's the argument he's been
00:24 18 making for the past year that he lost on, on all of the
00:24 19 mandamuses.

00:24 20 THE COURT: Okay. Hey, Mr. Ferguson, you
00:24 21 know the Court of Appeals has issued a ruling against
00:24 22 you on your appeal, and you're saying, well, but the
00:24 23 mandate hasn't come down. I -- I understand that. I'll
00:24 24 have to check that -- I don't know, because -- you think
00:24 25 you ought to work something out with Mr. Ghrist that at

00:24 1 some point even if he gets the mandate?

00:24 2 MR. FERGUSON: I don't know what we're
00:24 3 supposed to work out right now, Your Honor. I'm just --
00:24 4 there's a specific rule when you post a cash bond what
00:24 5 takes place.

00:24 6 THE COURT: But the mandamus -- okay. All
00:24 7 right. And I understand where Mr. Ghrist is coming
00:24 8 from. Okay. All right. I -- I have not read your full
00:24 9 motion Mr. -- not -- not your motion; your response. In
00:25 10 it, you apparently had a motion to abate, which you
00:25 11 haven't set that for hearing, and I don't know what to
00:25 12 do about that.

00:25 13 I do have in front of me two motions, a
00:25 14 second amended motion to compel and a motion to quash
00:25 15 subpoena duces tecum against entities owned by you,
00:25 16 Mr. Ferguson, right?

00:25 17 MR. FERGUSON: Yes, and me personally.

00:25 18 THE COURT: Okay.

00:25 19 MR. FERGUSON: I'm not a party to the
00:25 20 lawsuit.

00:25 21 THE COURT: Okay. I thought -- isn't
00:25 22 the -- isn't the case against MBH and also -- I'm
00:25 23 sorry -- and your PC?

00:25 24 MR. FERGUSON: Yeah, but it's not against
00:25 25 me personally.

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00:25 1 THE COURT: Okay. I see what you're
00:25 2 saying. Well, I haven't read that yet. I just pulled
00:26 3 it up again trying to look at it.

00:26 4 Mr. Ghrist, you're saying that you want an
00:26 5 order from the Court on a motion to compel with respect
00:26 6 to the responses to the interrogatories and the request
00:26 7 for production; is that correct?

00:26 8 MR. GHRIST: Technically, we already have
00:26 9 the motion to compel.

00:26 10 THE COURT: Right.

00:26 11 MR. GHRIST: They've already been
00:26 12 compelled, so we're past that stage and this is -- he's
00:26 13 actually been held in contempt of court --

00:26 14 THE COURT: Right.

00:26 15 MR. GHRIST: -- this is like a second
00:26 16 chance to not get held in more contempt of court --

00:26 17 THE COURT: Right.

00:26 18 MR. GHRIST: -- but yes, I wouldn't call it
00:26 19 a motion to compel, because it's -- we're way past the
00:26 20 compelling.

00:26 21 THE COURT: It'd give him another
00:26 22 opportunity to respond or better yet to complete and --
00:26 23 or you're asking me also to find additional sums of
00:26 24 money or throw him in jail, right?

00:26 25 MR. GHRIST: Yeah, I don't really like the

00:26 1 jail thing. I put it in there, because it's a remedy on
00:26 2 contempt, but I don't -- it doesn't help me at all.

00:27 3 THE COURT: No, it doesn't help anybody
00:27 4 right now.

00:27 5 MR. GHRIST: So I'm asking for \$5,000 as
00:27 6 additional -- \$5,150 as additional discovery sanctions.
00:27 7 Basically, there's an attorney fee affidavit for all the
00:27 8 time I spent dealing with this and the other issues
00:27 9 related to it.

00:27 10 Then asking for the penalty to go up. I
00:27 11 don't know that that's going to make any difference or
00:27 12 not. The \$200 penalty didn't seem to make much
00:27 13 difference, but maybe increasing the penalty would --
00:27 14 would help.

00:27 15 And then, you know, obviously, we could --
00:27 16 the previous order stated that he would be defaulted on
00:27 17 the motion for an injunction.

00:27 18 THE COURT: Yeah.

00:27 19 MR. GHRIST: But at this point, I think
00:27 20 that -- that should be signed.

00:27 21 And then the next -- so the -- on the
00:27 22 proposed order everything that says in addition, those
00:27 23 are all like specific orders to produce the documents
00:28 24 that I'm requesting, which I guess they're duplicative
00:28 25 of what's already been ordered, but I guess it would at

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00:28 1 least clarify that these do have to be produced.

00:28 2 And then I'm asking for the motion to quash
00:28 3 the subpoenas for the bank records to be denied. I
00:28 4 didn't -- I would add that the subpoena for the bank
00:28 5 records is only asking for records of the defendants and
00:28 6 asking to identify what accounts Mr. Ferguson has,
00:28 7 because if those assets are being dissipated, then that
00:28 8 would -- that would show where they are likely to be.

00:28 9 The -- there's -- the interrogatory
00:28 10 responses state that there's about \$750,000 of money
00:28 11 that's been collected by MBH Real Estate off of
00:28 12 mortgages and then about 111,000 of that is tax and
00:28 13 insurance money.

00:28 14 And then another interrogatory states that
00:28 15 Mr. Ferguson spent the remaining 600,000 and references
00:28 16 these very short summaries that don't tell me anything
00:29 17 about where the money was spent. I don't think there's
00:29 18 any other way to figure out where that \$600,000 went
00:29 19 besides looking at the bank records and the QuickBooks
00:29 20 files.

00:29 21 MR. FERGUSON: Your Honor --

00:29 22 MR. GHRIST: I know it went somewhere. I'm
00:29 23 guessing it went into one of Mr. Ferguson's other
00:29 24 companies if it's not still in there.

00:29 25 MR. FERGUSON: It went to Mr. Bell of which

00:29 1 you used to represent and you know that's where the
00:29 2 money went.

00:29 3 THE COURT: He's just asking for
00:29 4 documentation. That's all.

00:29 5 MR. FERGUSON: Your Honor, he got all that
00:29 6 in the other lawsuit. We reported every month --

00:29 7 MR. GHRIST: -- that's --

00:29 8 THE COURT: -- time out. I -- I -- listen,
00:29 9 this is discovery related to this -- this case.

00:29 10 MR. FERGUSON: Your Honor, I'm saying he
00:29 11 has it. If he has it --

00:29 12 MR. GHRIST: -- I have the QuickBooks files
00:29 13 and the NoteSmith file that said would be produced? I
00:29 14 don't have any of that.

00:30 15 MR. FERGUSON: You can't have the NoteSmith
00:30 16 files because it -- it pertains to people that you have
00:30 17 nothing to do with. The --

00:30 18 MR. GHRIST: The response specifically
00:30 19 stated that file would be produced, and it was not
00:30 20 produced.

00:30 21 MR. FERGUSON: That is just -- you're
00:30 22 asking what software we use and I told you.

00:30 23 MR. GHRIST: No, it says a file called
00:30 24 NoteSmithFlashDrive.Zip is being produced. That file
00:30 25 was not produced.

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00:30 1 MR. FERGUSON: That is a NoteSmith program.

00:30 2 THE COURT: You didn't produce it.

00:30 3 MR. FERGUSON: Your Honor, we cannot

00:30 4 produce that.

00:30 5 THE COURT: But you said --

00:30 6 MR. FERGUSON: -- the Court --

00:30 7 THE COURT: -- that was what was

00:30 8 interesting in your response --

00:30 9 MR. FERGUSON: If he want -- he said what

00:30 10 software. Produce the software being used. It's

00:30 11 NoteSmith.com, the zip file. You can download it

00:30 12 yourself.

00:30 13 MR. GHRIST: I don't want the program --

00:30 14 (Simultaneous conversation.)

00:30 15 MR. GHRIST: -- I want the data in the

00:30 16 program.

00:30 17 MR. FERGUSON: Your Honor, we have a duty

00:30 18 to protect our customers' sensitive data. And under the

00:31 19 law, he's not entitled to that. He's saying he just

00:31 20 wants this information to see if anything's being

00:31 21 transferred. Go to the courthouse and look to see if

00:31 22 anything -- any assignment of lien or releases or

00:31 23 anything are filed. All of it is real estate related.

00:31 24 And in order to get this information, he's

00:31 25 supposed to have an injunctive hearing where evidence is

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67TH DISTRICT COURT

00:31 1 put on, and he's supposed to prove up that there is a
00:31 2 need that there is evidence that there is assets being
00:31 3 transferred and that is just not the case.

00:31 4 We never even got a hearing. There's not
00:31 5 even a motion to enjoin on file.

00:31 6 MR. GHRIST: There is one on file.

00:31 7 MR. FERGUSON: All right. Your Honor, I'm
00:32 8 just going to summarize. The Court does not have
00:32 9 jurisdiction over the matter, and I am following the
00:32 10 rule of law. And that's what I'm asking the Court to
00:32 11 do, and I'm asking the Court to please go read the
00:32 12 *Emeritus* case. If you'll read *In re University*, you
00:32 13 will see that the only way that you can do discovery
00:32 14 after it -- after the plenary power has expired is if
00:32 15 you are doing a net worth -- a net worth determination
00:32 16 hearing where Mr. Ghrist came back and filed a motion
00:32 17 for sufficiency of the bond and one other thing, which
00:32 18 none of those happened and --

00:32 19 MR. GHRIST: -- the one other thing is
00:32 20 this, the transfer of dissipation --

00:32 21 THE COURT: Let him finish. Mr. Ghrist,
00:32 22 let him finish.

00:32 23 MR. GHRIST: Sorry, Your Honor.

00:32 24 THE COURT: Go ahead.

00:32 25 MR. FERGUSON: No. I'll get you the

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00:32 1 specific rule. It's going to be a -- Your Honor, under
00:33 2 24.3 it says, The continuing trial court jurisdiction
00:33 3 after the plenary power expires -- even after the
00:33 4 trial's court plenary power expires, the Court has
00:33 5 continuing jurisdiction to do the following: Order the
00:33 6 amount and type of security and decide the sufficiency
00:33 7 of the sureties. We're not here about that.

00:33 8 And two, if circumstances change, modify
00:33 9 the amount and type of security required to commend the
00:33 10 suspension of a judgment's execution. We're not here
00:33 11 about that either.

00:33 12 It was a money judgment, a cash bond was
00:33 13 paid, and so there was never a net worth determination
00:33 14 hearing, which is what would have given the Court
00:33 15 continuing jurisdiction so that Mr. Ghrist could get the
00:33 16 discovery that he is saying he wants. But that did not
00:34 17 happen.

00:34 18 And what the Court seems to be asking --
00:34 19 telling me is that it doesn't matter what the law says,
00:34 20 but it should matter. 'Cause this is what the law is.

00:34 21 THE COURT: Mr. Ghrist, anything else?

00:34 22 MR. GHRIST: I don't have a whole lot to
00:34 23 add to that. I -- I could go through the proposed order
00:34 24 and the types of relief, but I think -- I think the
00:34 25 Court knows what I'm asking for and what already

00:34 1 happened. I am happy to go over those rules again that
00:34 2 we've been over at every prior hearing if -- I don't
00:34 3 think I need to.

00:34 4 THE COURT: I guess I need to look at the
00:34 5 file a little more closely and see what Judge Chupp
00:34 6 ruled on and then see what this -- this panel said back
00:35 7 in -- on January 7th. The Second Court of Appeals
00:35 8 reconfirmed the decision of December of 2020.

00:35 9 And if that's what we're waiting on a
00:35 10 mandate, I -- I mean, I'm trying to figure all -- let me
00:35 11 just look at it. I mean, I -- I don't have the luxury
00:35 12 of recalling any of this, because I didn't handle it,
00:35 13 but I'm not -- I -- I -- I don't know.

00:35 14 MR. GHRIST: Well, at the bare minimum, I
00:35 15 think that the injunction should be granted.

00:35 16 THE COURT: Yeah.

00:35 17 MR. GHRIST: The previous order that was
00:35 18 signed by this Court stated that that's what would
00:35 19 happen if the discovery wasn't responded to.

00:35 20 THE COURT: I think if I -- I don't
00:35 21 disagree with Mr. Ghrist.

00:35 22 Mr. -- Mr. Ferguson, if I'm going to stand
00:35 23 down to give me time to review all this, don't you think
00:35 24 an injunction to enjoin you from moving assets ought to
00:36 25 be occurring right now?

00:36 1 MR. FERGUSON: Without a hearing without
00:36 2 any evidence? There's never been an evidentiary hearing
00:36 3 on this.

00:36 4 THE COURT: But you're -- you're refusing
00:36 5 to allow him to have the evidence, right, 'cause you're
00:36 6 saying he can't do any discovery?

00:36 7 MR. FERGUSON: I gave him the evidence.

00:36 8 THE COURT: No. He --

00:36 9 MR. FERGUSON: At the last time -- no,
00:36 10 your -- you're taking what Mr. Ghrist is saying, but he
00:36 11 got tax returns --

00:36 12 THE COURT: You need -- Counsel, you need
00:36 13 to quit arguing with the Court. I will throw you in
00:36 14 jail. You need to quit arguing with the Court.

00:36 15 Mr. Ghrist, let me look at everything.

00:36 16 Mr. Ferguson, let me look at everything.
00:36 17 I -- I -- let me see what I can do. I need to -- I need
00:36 18 to look at this.

00:36 19 I think the Court of Appeals has ruled on
00:36 20 this, a couple of Court of Appeals have ruled on this.
00:37 21 I need to see where we are with respect to a mandate and
00:37 22 things like that. I don't know. I have no idea, but
00:37 23 this case is -- the discovery has been ongoing and the
00:37 24 courts of appeals have denied stopping it through a
00:37 25 mandamus action.

00:37 1 The Court again, on the record, is asking
00:37 2 Mr. Ferguson to get counsel to represent him. For the
00:37 3 record, he refuses. I think it's in his best interest,
00:37 4 but that's not going to happen.

00:37 5 So here's what the Court is going to do.
00:37 6 The Court's going to recess this and hopefully, I'll get
00:37 7 back to you if not late next week -- this week, then
00:37 8 sometime next week and may ask us all to gather again.
00:37 9 Okay.

00:37 10 MR. GHRIST: Thank you, Your Honor --

00:37 11 THE COURT: -- where we're at and I need to
00:37 12 look at this.

00:37 13 All right. Court stands in recess.

00:37 14 (Proceedings concluded at 11:09 a.m.)

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C E R T I F I C A T E

THE STATE OF TEXAS)

COUNTY OF TARRANT)

I, MONICA A. RITCHIE, Official Court Reporter in and for the 67th District Court of Tarrant County, State of Texas via Zoom video conference, do hereby certify that the above and foregoing contains a true and correct transcription of all portions of evidence and other proceedings requested in writing by counsel for the parties to be included in this volume of the electronic reporter's record, in the aforementioned cause, all of which occurred in open court or in chambers and were reported by me.

I FURTHER CERTIFY that this electronic reporter's record of the proceedings truly and correctly reflects the exhibits, if any, offered and/or admitted by the respective parties.

I FURTHER CERTIFY that the total cost for the preparation of this electronic reporter's record is \$216.00 and was paid by Plaintiffs.

WITNESS MY OFFICIAL HAND this the 23rd day of March, 2021.

/s/ Monica A. Ritchie
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